

TENANTS LAW:

OR THE

LAW^{c†}

OF

Landlords, Tenants,
and Farmers.

SHEWING

The several Kinds of Tenures and

Tenants, of Leases, Covenants, Reservations,
and Assignments. The Doctrine concerning
Common of Cattle, &c. between Landlord
and Tenant. Of Distresses for Rent, Rescous
and Replevins, with all the Acts relating to
Landlords and Tenants, and useful Obser-
vations and Cases adjudged thereupon. Of
Bargaining, Buying and Selling: Also con-
cerning Crops of Corn, &c. Of Waste, Nu-
sances committed; and of the new building
of Houses within the Bills of Mortality.

Being useful for all Landlords, Tenants, Farmers,
Agents and Solicitors.

With an exact Table to the Whole.

The Fifth Edition, with Large Additions.

In the SAVOR:

Printed by J. Nutt, Assignee of Edw. Sayer Esq;
for J. Malthoe in the Temple-Cloysters, 1710.

S
UR
918
TEN

TX
T289
Ed 5

Nov 22 1927

NOV 22 1927

I
A
C
th
K
P
C
T
v
t
H
C
C
t

TO THE
READER.

THIS small Treatise having met with a very favourable Acceptance, being the First that was ever Printed in its Kind ; hath encourag'd the Publisher hereof to revise, correct, and supply every Thing that he thought was wanting, to make it the most Compleat of any Book now extant : In order thereunto, he hath carefully examined the Authorities by the respective

To the READER.

Books of the Law, and hath added many late adjudg'd Cases proper to the Subject, by placing them under their convenient Heads and Chapters. And Lastly, hath added several new Chapters, with the Acts of Parliament that relate to *Landlords* and *Tenants*, and what concerns the preventing the Destruction of Houses by Fire, and of the new Building of Houses within the Bills of Mortality.

THE

THE
CONTENTS.

CHAP. I.

*A Division of the several Kinds
of Tenants and Tenures,*
Page 1

CHAP. II.

*Of Leases, Covenants and Condi-
tions, Provisoes and Reservations,
Surrenders, and Assignments of
Leases* 57

CHAP. III.

*Of Payment of Rent, Acceptance and
Extinguishment thereof; De-
mands, Entries, Dates, Conti-
nuances,*

The CONTENTS.

nuances, Limitations, and Determinations of Leases, Page 110

CHAP IV.

Of Corn sown, who shall have the Crop. Of Estovers, and Trees blown down: Of Distresses, what Things may be distreined, and how used. Who may take a Distress, for what Cause, when and where: With the late Acts of Parliament for Sale of Goods, &c. distreined for Rent. 137

CHAP. V.

Of Rescous, in what Cases it may be lawful. Of Replevins, how to be sued out: And of Avowries to Declarations upon Replevins, 187

CHAP. VI.

In what Cases a Tenant or other may be said to commit Waste, in Houses, Gardens, Woods, Pastures, Orchards,

The CONTENTS.

*chards, &c. And what Waste
shall be punishable, and what not :
With some Observations concern-
ing the cutting, spoiling and steal-
ing of Wood*

Page 201

C H A P. VII.

*The Doctrine concerning Common of
Cattle, &c. between Landlord
and Tenant, &c.*

219

C H A P. VIII.

*Several Observations upon the Sta-
tute 29 Car. 2. which was made
to prevent Frauds and Perju-
ries, and relates to Bargains in
buying and selling Goods and
Chattels*

264

C H A P. IX.

*Containing several Matters relating
to Farmers, and such as keep
and feed Sheep and other Beasts :
As also to Actions for Nuisances
done*

The CONTENTS.

done by one Tenant to another,
&c. Page 272

CHAP. X.

*Some further Observations relating
to Covenants in Leases, &c. With
several Modern resolved Cases re-
lating to Pleadings in Covenants
upon Leases* 286

*Also concerning the late Acts of
Parliament to prevent Destruction
of Houses by Fire, and of the
new building of Houses within the
Bills of Mortality* 307

THE

THE
L A W S
CONCERNING
Landlords and Tenants.

CHAP. I.

*A Division of the several Kinds of
Tenants and Tenures.*

EVERY Subject of this Kingdom that occupieth any Lands, or inhabiteth in any House or Tenement, is said to be a Tenant, *Tenens a Tenendo*; because he must hold of some Lord or other.

*The Kinds
of Tenants
and Te-
nures.*

And divers and various are the Natures and Kinds of Tenants and Tenures in this Land at this Time; although they have been more numerous, and indeed excessive Sla-

B

very

very to the People, so that their exorbitant Cruelty hath caused their Dissolution.

Ville-
nage.

Those which are ceased to be, are Tenure in *Villénage*, where the Lord might vassal and enslave his Tenant's Person at his Pleasure, but not kill him.

Pillenage.

Pillenage, where the Lord might pillage his Tenant of all his Goods.

Free-Alms.

Frank-Almoigne, or Free-Alms, was a Tenure begun, and had its Original either at or soon after the Foundation of *Monasteries* and Religious Houses, and extirpated with them. The Nature of it in old Time was, when a Man being seised of Lands or Tenements in his *Demeasne* as of Fee, of the same Land did enfeof some Abbot or Prior and their Covents, or some Dean and Chapter and their Successors, or some Parson of a Church and his Successors, or any other Religious Person who was in a Capacity to take such Alms, to hold the same Lands and Tenements to them and their Successors in *Liberam Eleemosynam*, in Free-Alms or *Frank-Almoigne*, of the Grantor and his Heirs: And such as held in Free-Alms, were bound, in Consideration of such Grant or Feoff-

Feoffment, to perform certain Divine and Religious Services and Exercises, for the Souls good, Life and Prosperity of the Grantors, and all others.

And they confirmed all their Grants, with grievous *Anathema's* and Imprecations against all such as should in any ways diminish or take away such their Grant, or convert the same unto any other Use; (which some justly believe to be none of the least Causes, why Purchasers of Church-Lands find such ill Success, and seldom do enjoy it to the Fourth Generation.)

But, as I said before, this Tenure and the Religious Houses ended together, or immediately one after the other; So that none can grant any Lands or Tenements in *Liberam Electionem* at this Day.

Tenure in Capite and Knights-Service, was also by Act of Parliament, *Anno 12. Car. 2. cap. 24.* (together with the Court of Wards, which was dependant upon that Service) taken away, and all those Tenures are now turned into Common *Socage*.

So that the more usual Tenants amongst us at this Day, are,

B 2

Tenant

Fee-Simple. Tenant in Fee-Simple, in Fee-Tail.

Fee-Tail. Tenant in Tail, after possibility of Issue extinct.

Dower,
Courtesie,
Term of
Life, for
Years
At Will. Tenant in Dower, by the Courtesie of *England*; Tenant for Term of Life, for Years upon Lease, in Writing, or Lease Parol.

Tenant at Will; by the Common Law, or by Custom.

Copy. Tenant by Copy of Court-Roll.

Coparcenary. Tenants in Coparcenary, Joint-Tenants, and Tenants in Common.

Fee-Simple.

Fee-Simple. A Man that is seised in Lands or Tenements, to hold to him and his Heirs for ever, is said to be Tenant in Fee-Simple, and such an Estate is called *Feodum Simplex*. The Word *Feodum* in *Latin* being taken to signify Inheritance; and *Simplex* implies pure, plain or unmixed: And indeed Fee-Simple is the most pure holding; that is, being unmixed or entangled in itself. But as the whitest Colour will be soonest stained, so is this pure Tenure most subject to be spotted and involved in Troubles above any other; which the Law calls *Incumbrances*. *Lit. Ten. Li. i. Cap. i.* If

Landlords and Tenants.

5

If a Man were to deal as Purchaser with a Tenant in Fee-Simple, he hath a happy Bargain if he meets with a Simple Tenure and a Simple Tenant; I mean, the one free from Incumbrances, and the other from Deceit; which many have found it a difficult Thing to obtain.

Incumbrances of Fee-Simple.

I shall therefore, by way of Caution, set down the several Troubles and Incumbrances this Pure and Simple Tenure, called Fee-Simple, is Subject unto.

Fee-Simple may be incumbered, with several Judgments, Statutes Merchant and of the Staple, Recognizances, Mortgages, Wills, Pre-contracts, Bargains and Sales, Feoffments, Fines, Amerciaments, Jointures, Dowers, and many other fraudulent Conveyances, if a Knave once possess it; and last of all, may be quite forfeited for Treason.

What Incumbrances.

Forfeited.

But Fee-Simple being free from any of the aforementioned Incumbrances, is the most free, absolute, and ample Estate of Inheritance that any Man can have; And therefore a Tenant in Fee-Simple, is said to be *Seisitus in Dominico suo, ut de feodo*; that is, seised in his Demeasne as of Fee.

*Tenant in Fee-Tail.**Fee-Tail.*

All Freehold Inheritances before the Statute of *Westminster. 2 Cap. 1.* were Fee-Simple at the Common Law; so that Tenant in Tail was instituted by Force of that Statute; By which Statute there is a Twofold Tenant in Tail, *viz.*

*General and Special-Tail.**General-Tail.*

He is said to be Tenant in General-Tail, who holdeth Lands or Tenements to him, and to the Heirs of his Body begotten.

For if in this Case he marry many Wives, and have Issue by them all; every one of them may (the Elder dying) come to inherit this Land, because every one is the Issue ingendred of his Body.

It is the same Case, if Lands or Tenements be invested upon a Woman and the Heirs of her Body, and she have several Husbands, and Children by them all, every one of them is in a Possibility to inherit those Tenements, being all begotten of her Body.

But where Lands or Tenements
are

Landlords and Tenants.

7

are settled upon a Man and his Wife, and the Heirs of their Bodies between them Two lawfully to be begotten; This is Tenant in Special Tail, because in this Case none can inherit, but such Children as are by this Man begotten upon the Body of this Wife named in the Grant: And if that Wife die, and the Man taketh another Wife, and hath Issue of her Body, the Issue by the latter Wife cannot inherit by Vertue of such a Grant; And if the first Husband die, and the Wife marry again and have Issue by a second Husband, that Issue cannot inherit. *Lit. Ten. l. 1. c. 2 f. 5. v.*

Special Tail.

There be several others Estates in Special Tail, according to the Devices, Limitations, and Conditions, invented and settled by the Donor; as sometimes to a Man and his Wife, and the Heirs Males of their Bodies, between them Two to be begotten: In this Case the Females cannot inherit. *Et a. contra*: For if limited to Heirs Females of their Bodies, then the Males cannot inherit.

separation with Limitation.

So that if Lands be invested upon a Man and his Heirs Males of his Body, and he hath Issue Two Sons and dieth, the eldest enters according to the Grant, and hath Issue a Daughter

and dieth: This Daughter shall not inherit the Land, but the Brother, because he is the Heir Male.

Tail becomes extinct.

And if a Man hath Lands granted to him, and to his Heirs Males of his Body; and he hath no Son, but only a Daughter; and the Daughter hath a Son and dieth, living her Father, and after that the *Donee* dieth: In this Case, the *Donee* dying without Issue Male in the Law, the Son of his Daughter, which is his Grandchild, shall not inherit, but the Entail is extinct, and the Land shall revert to the *Donor*.

Tail Tenures Incumbrances

These Grants in Tail are the Cause of much Strife, and stir up many chargeable Suits, tho' in my Judgment they are useless: For the Intent of the *Donor* is seldom observed in them, he intending to preserve the Memory of his own Name to Perpetuity; which cannot be, since a Fine and Recovery will *dock* it.

Entry by the Donor.

If Tenant in Tail general or special die without Issue, the *Donor* or his Heirs shall enter as in their Reversion, for in every Gift in the Tail, without more saying, the Reversion of the Fee-Simple is in the *Donor*. *Lit. Ten. l. 1. ca. 2. f. 3.*

Tenant

Tenant in Tail after Possibility of Issue extinct.

When Lands and Tenements be granted to a Man and his Wife in special Tail, and one of them die before they have Issue, the Survivor is Tenant in Tail after Possibility of Issue extinct; but if they have Issue, during the Life of the Issue the Survivor cannot be said to be Tenant in Tail after Possibility of Issue extinct. But if the Issue die without Issue, and leave none to inherit by Vertue of the Entail, then the surviving Donee is Tenant in Tail after Possibility of Issue extinct. *Lit. Ten. l. 1. ca. 3. f. 7.*

And none can be Tenant in Tail after Possibility of Issue extinct, but One of the Donees in special Tail; which Tenant in Tail after Possibility of Issue extinct is not chargeable for committing of Waste, because the Inheritance was once in him; but if he doth alien in Fee, it is a Forfeiture of his Estate, and the Heir in Reversion may enter. For several other Privileges and Qualifications of this Tenant, *Vid. Co. Lit. f. 27. b. Fitz Waste 125. Kitch. f. 228.*

*Tenant by the Courtesie of England.**Tenant by
the Cour-
tesie.*

When a Man marries a Wife seised in Fee-Simple, or in general Fee-Tail, or one that is Heiress unto Lands or Tenements in Special, and hath a Child by the same Wife Male or Female born alive, and the Wife die; whether the Child be living or dead, the Husband shall hold the same Lands during his Life, as Tenant by the Courtesie of England, which is a Tenure used in none other Country but in England: And altho' the Child die as soon as it is born, if it were but heard cry, the Husband shall hold the Lands after his Wife's Decease during his Life as Tenant by the Courtesie; the crying of the Child being a sufficient Testimony of its being born alive. *Lit. l. 1. ca. 4. f. 8.*

*Tenant in Dower.**Tenant in
Dower.*

This kind of Tenant is always of the Feminine Gender; and is, when a Man who is seised of Lands or Tenements in Fee-Simple, or in General Tail, or as Heir in Special Tail, marries a Wife and dies; the Wife, after the Death of her Husband, shall have during her Life the third
Part

Part of such Lands or Tenements as her Husband had during the Coverture, whether she had any Issue by him or not, so she be above Nine Years of Age at her Husband's Death. *Lit. l. 1. ca. 5.* This is Dower *Dower at* at the Common Law; but by Cu- *Common-*stom in many Places it is otherwise: *Law.* For in some Places she shall have the half, and in others the whole; and in all these Cases she is Tenant in Dower.

In *Kent*, it is the Custom for the *Dower by* Woman to have half her Husbands *the Custom.* Lands *durante viduitate*, so long as she continues a Widow, and without Child; but if she marry again, she loses all: So likewise is the Custom there, if a Man marry a Wife having an Estate in Lands, &c. and she die without Issue, he shall have half while he remains sole; but if he marry again he loseth all. And in *Kent* they say, the Reason thereof is, Because they do not love that their Lands should help to maintain any Children but such as are of their own getting; but how sure they are hereof, *Ignoramus.*

That by the Custom of some Towns or Boroughs, she shall have the whole. See more of this, Co.

Lit.

The *L A W S* concerning

Lit. 31. 33. That there needs no Livery and Seisin to an Assignment of Dower. *Co. Lit.* 35. And that it must be of some Part of the Land, or of a Rent issuing out of the same. *Ibid.* & *Dyer* 91. See more in *Lit. Ten.* l. 1. ca. 6. f. 11. and *Co. Lit.* on the Chapter of Dower.

Tenant for Life.

He that holdeth Lands or Tenements for the Term of his own Life, or for the Term of the Life of any other Person: In this Case, the Lessee either for Term of his own Life, or for anothers, is Tenant for Term of Life: And this Tenant for Life hath in him the Freehold, this being the lowest Degree of Freehold. *Lit. Ten.* l. 1. ca. 6.

If a Man be Tenant for Term of his own Life, he hath a higher Estate than he that is Tenant for the Life of another. *Co. Lit.* 42. a.

Note, A Lease for Life must be executed with Livery, because an Estate for Life is a Freehold. See after 14.

Lessor and Lessee. In a Grant for Term of Life, it is said to be from Lessor to Lessee.

Note, there is Feoffor and Feoffee, Donor.

Donor and Donee, Lessor and Lessee; so there is likewise Grantor and Grantee, Obligor and Obligee, Mortgagor and Mortgagee.

He that enfeoffeth another in *Feoffor and Lands or Tenements*, is called the *Feoffee*. *Feoffor*; he to whom the Feoffment is made, is the *Feoffee*.

So when a Man giveth Lands or *Donor and Tenements* to another in Tail, he is *Donee*. called the *Donor*; and he to whom the Gift is made, is the *Donee*.

And likewise he that letteth to a *Grantor and Grantee*. nother any Lands or Tenements to hold for Term of Life, for Years, or at Will, is called the Lessor; and he to whom the Leases is made, is called Lessee: Which Lessee for Life (as I said before) is Tenant of Freehold. So also he that pawneth Lands to a *Mortgagor and Mortgagee*. nother is called Mortgagor, and he to whom it is pawned is called the Mortgagee.

Tenant for Years.

Tenant for Term of Years, is when *Tenant for Years*. a Man demiseth, and letteth any Lands or Tenements to another to hold for a certain number of Years agreed upon between the Lessor and the Lessee; by Force and Vertue of which

which Lease, the Lessee entereth in to the said Tenements.

This Lease for Term of Years may be granted by Word of Mouth, and this is called a Lease Parol: Which formerly bound the Lessor so long as the Term is accorded for, if the Witnesses lived to prove the Lease Parol.

But now the more safe and usual Way is to take a Lease by Deed indented, which needs no other Execution but only Sealing and Delivery. For by vertue of that Lease, the Tenant may enter whensoever he will.

Leases Parol.

Also by 29 Car. 2. Leases Parol or by Word of Mouth, will be void if they exceed Three Years from the making: also if they do not exceed Three Years, yet Two third Parts of the improved Value of the Thing demised must be reserved to the Landlord. See after Chap. 2.

And no Leases, Estates or Interests, either of Freehold or Terms for Years, or any uncertain Interests not being Copyhold or Customary Interests, shall be granted or surrendered unless it be by Deed or Note in Writing, signed by the Party so granting or surrendering the same, or their Agents lawfully Authorized by

by Writing, or by Act and Operation of Law.

And no Action shall be brought to charge any Person upon any Contract or Sale of Lands, Tenements, or Hereditaments, or any Interest in or concerning them, unless the Agreement upon which the Action shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party or some other Party, by him lawfully Authorized. See Chap. 7. for further Observations on this Statute.

Every one seised of an absolute Estate in Fee-Simple in his own Right, may make a Lease for as many Years as he pleaseth; provided it be not to a Body Politick, lest by exceeding it seem a Devise in Mortmain, and some say for a Hundred. Others, if but for Eighty Years 'tis Mortmain; and in this Case, the Chief Lord may enter for the Forfeiture, unless they have purchased Licence from the King and the said Chief Lord. See 29 H. 8. *Mortmain*. 39. Stat. 23 Hen. 8. 10. &c. Fitz f. 222. D. 223. E.

But a Lease for Term of Life must be executed by *Livery and Seisin*; *Seisin* in because the Freehold passeth with *Lease* for that *Life*.

that Lease, which it cannot do without *Livery* and *Seisin*.

This was the Case of *Allen* and *Waller* at the *Lent-Affizes* at *Maidstone* 1654. *Waller* brought an *Ejectione Firme* against *Allen*; the Defendant proved a Lease Parol at a certain Rent during his Life: Which last Word of the Defendant's Witness gave the Verdict against him, because none can be Tenant for Life, without *Livery* and *Seisin*.

Also if a Man make a Lease to one for Years, the Remainder to another for Life, or in Tail, or in Fee, here the Lessor ought to make *Livery* and *Seisin* to the Lessee for Years; or else nothing shall pass to him in Remainder, though the Lessee enter and enjoy his Term of Years; but the Freehold and the Reversion remains in the Lessor. But if the Lessor make *Livery* and *Seisin* to the Lessee, then the Freehold passes over to them in the Reversion, according to the Grant. For the manner of *Livery* and *Seisin*, see *Pract. Reg.* last Published, 397.

That *Livery* must pass a present Freehold, and cannot commence in *futuro*. *Hab.* 171.

How

How a Corporation may make *Livery* and *Seisin* by Attorney, *Pract. Reg.* 397.

If a Tenant for Years of Lands consent that *Livery* and *Seisin* shall be made unto him that hath purchased the Reversion of those Lands let unto him, and it be made accordingly; this is a good *Livery* and *Seisin* to make the Reversion pass, altho' the Tenant for Years do not go off from the Land at the Time when the *Livery* and *Seisin* was made. *Ibid.* See after (83, &c.)

Likewise if a Man make a Lease of Lands or Tenements to another for Term of Years, and the Lessor die before the Lessee enter into the Tenements; nevertheless he may enter, notwithstanding the Death of the Lessor, because the Lessee hath Right to the Tenements by vertue of his Lease, immediately after the Sealing and Delivery of it. *Vide Chap. 2.*

Tenant at Will.

When a Man demises Lands to another to hold to the Lessee at the Will of the Lessor, *vel e contra*, and by vertue of this Lease the Lessee is in Possession; here the Lessee.

Lessee is Tenant at Will, and hath no certain Estate in the Tenements he holdeth, but the Lessor may eject him when he pleases; neither can the Lessor force him to stay longer than he pleases. *Co. Lit. 55. a.*

*He that
sows shall
Reap, if
Tenant at
Will.*

But if the Lessee sow the Land, and the Lessor eject him out afterwards before the Corn be ripe, the Lessee shall nevertheless have his Crop, and shall have free Egress and Regress to cut and carry it away, because he knew not when the Lessor would enter upon him.

It is said, That if one be in Possession of the Lands of another, and hath usually paid a Rent unto him for these Lands, altho' it cannot be expressly proved that the Lands were demised at Will to him that is thus in Possession of the Lands, *viz.* That he should hold them as long as both Parties should please; yet if the Payment of a Quarter or half a Years Rent can be proved, this will be a good Evidence of a Lease at Will. *Pract. Reg. last Publish'd, 403.*

But if a Tenant for Years sow his Land so near the End of his Term, that his Lease expire before the Corn be ripe, he shall not come to reap it; but the Lessor or other who hath the

the Reversion shall have the Crop, because the Lessee knew certainly the End and Determination of his Term and Lease.

In like manner if a House be let to a Man to hold at Will, and the Lessee enters the House, and bringeth in thither his Goods and Household-stuff, and afterwards the Lessor ejects him out; here he shall have Liberty of Egress and Regress to fetch away his Household-stuff, Utensils, &c. and if such Tenant die, the like Liberty is given to his Executors, &c. *Lit. Ten. p. 15.* *Not so in Tenants for Years.*

Also if one seised in Fee-Simple, Fee-Tail, or for Term of Life in an House, and hath Goods in that House, and makes his Will, appointing his Executors, and dies; now to whosoever the House descends, the Executors shall have Liberty in some reasonable Time to enter and carry away the Goods.

And if a Man by Deed of Feoffment grants certain Lands to another, and delivers him the Deed, but executes it not by *Livery and Seisin*; the Feoffee in this Case may enter that Land and hold it at the Will of the Feoffor, but the Feoffor may eject him out again when he will.

If

*Tenant at
Will not
bound to
Repairs.*

If a Man dwell in a House as Tenant at Will, he is not bound to repair the said House, as a Tenant for Term of Years is bound to do.

But if a Tenant at Will shall commit voluntary Waste, as to pull down Houses, and cut, grub, fell, or destroy Trees, the Lessor may bring his Action of Trespass against him for so doing: And the Lessor upon a Lease at Will, if he hath reserved a Yearly Rent, may either distrein, or bring an Action of Debt for the same, if it be in Arrear, which he pleases.

Tenant at Sufferance.

*Tenant at
Sufferance.*

Tenant at Sufferance, is he who comes in by lawful Lease, and keepeth Possession after his Lease is out, and wrongfully holdeth over: As Tenant for Life of J. S. who holdeth over after the Death of J. S. *Co. Lit. f. 57. b. Kitch. f. 238.*

The Lessor cannot have an Action of Trespass against such a Tenant before his Entry into the Premises. *Co. Lit. 57. b.*

Tenant

Tenant by Copy of Court-Roll.

This is a very ancient Tenure, and depends only upon Custom ; and there are so many and various Kinds of Customs in Copyholds in several Manors and Countries, that it would take up a large Volume to discourse of them all ; which is not now our present Intention, but we shall refer that Subject to a further Opportunity, and here shortly in general Terms set forth the Nature of a Tenant by Copy of Court-Roll. In a Manor wherein there is a Custom, and hath been so used Time out of Mind (for nothing can be a Custom, unless it be *Tempore quo non extat Memoria*, Time out of Mind), that certain Tenants within the said Manor have used to have Lands or Tenements, to hold to them and their Heirs in Fee-Simple or Fee-Tail, or for Term of Life, or upon any other Condition, at the Will of the Lord after the Custom of the same Manor ; such Tenants are called *Copyholders* ; that is, Tenants by Copy of Court-Roll. For a Copy of the Court-Roll is all the Evidence they have for their Estates in

*Tenant by
Copy of
Court-Roll.*

in the said Lands, *Lit. Ten. Li. 1. cap. 9.*

Copy-
holder can
not alien
by Deed.

Now a Tenant by Copy of Court-Roll may not alien his Estate by Deed; for if he do, it is a Forfeiture to the Lord, and the Lord may enter and take the Forfeiture. *Ibid. & Co. Lit. 59. a.*

But if any Tenant, by Copy of Court-Roll, will alien his Lands, he may do it by a Surrender into the Hands of the Lord, to the Use of him that shall have it; and any kind of Estate that a Free-holder can make of his Land by Deed, a Copyholder may do the same by Surrender, *Lit. & Co. ut supra.*

The Tenant by Copy of Court-Roll is also bound by the Custom to repair his Houses; and if he suffer any Tenement or House to fall down for want of Repair, or if he pull it down, he forfeits his Copyhold to the Lord of the Manor.

This Tenant is as well inheritable, as he that hath Frank Tenement by the Common Law, if he observe the Custom of the Manors, and perform and pay his Services. *4 Co. Rep. 21, 22, &c. See after 26, &c.*

There

There are Seven Properties incident for the Maintenance of a good Custom.

First, It must be reasonable.

Secondly, It must be certain.

Thirdly, It must be according to Common Right.

Fourthly, It must be on good Consideration.

Fifthly, It must be Compulsory.

Sixthly, It must be without Prejudice to the King.

Seventhly, It must be to his Profit that claimeth the same.

In Customs, there is User, Non User, Abuser, and Interuser.

User, Is when, according to Time and Occasion, a Custom is used.

Non User, Is when, for want of Time and Occasion, or through Negligence or Forgetfulness, a Custom is not used.

Abuser, Is when Custom is ill used; for as User doth nourish Custom, so doth Abuser destroy a Custom.

Interuser, is in some Cases, where a Custom may be used in one Sort, and sometimes in another, and yet a good Custom, if there be good Considerations for the Exchanging thereof at Times.

If

*Fine at the
Lord's Will.*

If the Lord have used, at the Admission of his Copyhold Tenants, sometimes to take for a Fine Two Pence, or sometimes Four Pence for an Acre, sometimes Twelve Pence an Acre; this Ufer is so uncertain, that it makes the Fine Arbitrable at the Lord's Will.

Custom to pay a Fine according to Yearly Value, Good. *Pract. Reg.* 174.

*Admission
without
Fine.*

If the Lord of a Manor have used Time out of Mind, to admit his Copyhold Tenants without Fine; this Usage shall bind the Lord, as well as a Fine certain.

*Work of Te-
nants.*

If the Lord have used to have certain Work-days of his Tenants, and that hath not been used by the Space of Twenty Years last past: yet that *Non user* is no Discharge to the Tenants, so that there be any alive that can remember the same.

*Interuser
for Rent.*

If the Tenants have Used, when they sow their Lands, to pay the Lord Rent-Corn, and when it lieth in Pasture to pay their Rents in Money, this is a good *Interuser*.

Idem.

If the Tenants have used to pay their Lord every Fourth Year a double Rent, and every Sixth Year an half Rent, this is a good *Interuser*.

If the Tenants have used to have *Abuser by*
Common of Pasture in their Lords *Cattle.*
Woods for their Horse-cattle and
they put in their Neat-cattle and
destroy the Woods, this is an Abuser;
But it is but finable, and no forfei-
ture of the Common, no more than
if they have Common for a certain
Number of Beasts in the Lord's Soil,
and they exceed the Number; this
Abuse by the Surcharging is only
Finable, and no Forfeiture.

If a Man have a Fair to be used *Forfeiture.*
Two Days, and he keeps it Three
Days, this Abuse is a Forfeiture.

Every good Custom is grounded *Customs*
upon good Reason, and that shall be *must be*
said in Reason a good Custom, that *reasonable.*
in Reason is a good Law; for Law
and Custom be of that Affinity, as
both do allow like Reason, and
both do forbid like Inconveniences;
And the final Effect of both, is to
discuss and to discern every Man's
true Right, and to give to every
Man that which is his own; for al-
though Custom in some Cases differ
from Law, and doth admit Execu-
tion of some Acts without some Ce-
remonies required by the Law; yet
the End and Effect of Custom, is to
maintain the like Reason, and avoid
the

the like Inconveniences as the Law doth.

For Services.

If the Tenants of a Manor will prescribe to hold without paying any Rents or Services for their Copyholds, this is no good Custom: But to prescribe to hold by Fealty for all manner of Services, is good and reasonable.

To hold a Court.

If a Lord will prescribe never to hold a Court but when it pleaseth himself, this is not good; But to prescribe never to hold a Court for the special Good of any one Tenant, except the same Tenant will pay him a Fine for the same; that is good and reasonable.

To Surrender.

If a Copyholder surrender his Land to the Use of a Stranger, in Consideration that the same Stranger shall marry his Daughter before such a Day; if the Marriage succeeds not, the Stranger takes no Benefit by the Surrender. But if the Surrender be in Consideration that the Stranger shall pay *such a Sum* of Money at such a Day; though the Money be not paid, yet the Surrender standeth good. Many Customs there are, which at the beginning were voluntary; and now by continuance are grown Compulsary: *Quæ initio fuerunt*

factum voluntatis ex post facto fuerunt necessitatis: Saith the Civil Law; which also in many Cases doth agree with the Common-Law.

Wilful denying of Services is a Forfeiture. *Lit. Rep. 295.* *Forfeitures,*

And if a Copyholder convert Part of his Land into a Fishery, 'tis a Forfeiture. *Idem 268.*

But if Tenant for Life of a Copyhold suffers a Recovery as Tenant in Fee-Simple, this is no Forfeiture. *1 Mod. Rep. 199.* *By Copyholders, &c.* If a Fold-Court is not due of Common Right, but of Custom, and there is Disturbance for it, 'tis no Forfeiture. *Lit. Rep. 267.*

And of all Forfeitures committed by Copyhold, the Lord only is to take Advantage.

Also if he in Remainder entreth upon a Tenant for Life of a Copyhold, and makes a Surrender, nothing passeth. *Mod. Rep. 199.* *Admittance.*

Note, An Admittance of Tenant for Years is an Admittance of him in Remainder. *1 Vent. 269. 1 Mod. 102, 120. 4 Co. 23. 3 Cro. 504.*

Custom for Copyholders to have Sole Feeding in a certain Waste, it is not needful to alledge that the Beasts were Levant and Couchant.

*Licence for
Beasts.*

Vid. 2 Lev. 2. 67. Here also it's said, Copyholders may Licence others (without Deed) to put on their Beasts, and may exclude their Lord. *1 Vent. 165. 2 Saund. 326, 327.* But if a Man claim only common Appurtenant or Part of the Herbage, he must not say for his Cattle Levant and Couchant; and *fol. 328.* says, The Licence ought to be by Deed.

In what Cases, and when the Lord shall seize the Copyhold Estate of his Tenant for Felony or Treason. *See 2 Vent. 38. 1 Lev. 263.*

Lands do not appear to be Copyhold, by saying, they were held according to Custom, unless it be laid at the Will of the Lord. *Idem 144.*

*Remain-
ders limit-
ed.*

A Remainder limited to one for the Life of a Tenant for Life may be good by Way of Remainder, because a Tenant for Life may forfeit by alienating in Fee, and then he in Remainder may enter and enjoy; but this Reason holds not in Copyholds: For if a Tenant for Life of a Copyhold commit a Forfeiture of his Estate, the Lord of the Manor shall take Advantage of a Forfeiture by Tenant for Life of a Copyhold, and not he that had the Remainder or Reversion. *1 Saund. 151.*

Also

Also a Lord may grant Copyhold Entry by forfeited before Seizure. 1 Lev. 26. Remainder
But *Strode* vers. *Dennison*. 3 Lev. 94. Man.

Copyholder for Life was attainted of Felony, and adjudged, That he in Reversion might take Advantage and enter; for the Estate for Life was determined by the Attainder, altho' it appeared the Felony was pardoned. *See after Copyholder convicted.*

No Forfeiture of a *felo de se* happens before an Inquisition is taken se. Felo de
and returned. *Saund.* 275. 362.

The Husband takes Copyhold Habendum. Lands of the Lord, to whom the Lord grants the Seisin to hold to the Husband and Wife; 'tis a good Grant to the Wife, altho' she is not named till after the *Habendum*. 1 *Saund.* 151.

A Lord without a Custom may Seizure seize the Land until the Tenant comes in to be admitted, but cannot seize them as forfeited without a Custom. 1 Lev. 63.

If he in Remainder of a Copyhold surrenders his Remainder for the Use of the Tenant for Life, and after his Decease to the Use of himself and his Wife, the Estate limited to the Tenant for Life is void; but the Estate limited to the Husband and Wife good by the Way of a Surrender by him in Remainder.

present Estate, but not by Way of a Remainder. 1 *Saund.* 150, 151, 152.

But a Surrender of a Copyhold in Fee, from the Time of his Death is void. *Idem* 151.

Copyholder
convicted.

A Copyholder convicted of Felony had Clergy allowed before Attainder; and the Court were of Opinion, That 'twas no Forfeiture without a special Custom. 1 *Lev.* 263.

Surrender.

If a Covenant or Agreement be to Surrender a Copyhold to the Use of A. then a Surrender into the Hands of Two Copyholders, according to the Custom, is sufficient. 1 *Lev.* 293.

Admittance.

A Copyhold Estate cannot be surrendered to another by Attorney without Deed; but one may be admitted to a Copyhold Estate without Deed. *Pract. Reg.* 170.

No Fine
due.

Admittance to a particular Estate, is Admittance to the Remainder; and no Fine ought to be paid for Admittance to a Remainder without special Custom; and a Refusal to pay a Fine upon a reasonable Doubt of the Custom, is not a Forfeiture. 3 *Lev.* 308.

Copy-

Copyhold Land of the Tenure of *Borough-English* surrendered to the Use *English.* of another Person and his Heirs, who dies before Admittance, the Right shall descend to the youngest Son. 1 *Mod. Rep.* 102. 3 *Keb.* 263. 4 *Co.* 22. b.

If a Copyholder for Life surrenders *Surrender.* to the Use of another who is admitted, by this the first Copyholder's Estate is clearly determined; but if Copyholder in Fee surrenders to the Use of another for Life, after his Death he shall have it again. *King and Lord's Case. H. 5. Car. 1. B. R. Rep. 793. Cro. 1. Par. 148.*

If an Infant surrenders Copyhold *By an Infant.* Land to another who is admitted, this is not good to bar the Infant, for he may enter at his full Age. *Gooles and Granes Case. More's Rep.*

If a Woman Copyholder take an *By Husband.* Husband who surrenders, this shall be no Discontinuance to the Wife nor her Heirs. 35 *Eliz. Bullock and Dibley's Case. 4 Co. Rep. 23.*

The Lord of a Manor seized a *Entry by Heir.* Copyhold without Cause, and granted it to another in Fee, the Grantee died, and his Heir was admitted: Then the first Copyholder died, and his Heir entred upon the Heir

of the Grantee, and surrendered to the Use of a Stranger ; and here the Heirs Entry before Admission was adjudged lawful, and his Surrender to the Use of a Stranger good ; and it was resolved, That the Descent of a Copyholder doth not toll or take away the Entry of another Copyholder who hath Right. *Cro. 2. Par. 36. and vide Co. 4. Rep. fol. 23.*

If a Copyholder for Life cut down Trees, the Lord may carry them away. *Pract. Reg. 170.*

Waste.

If a Copyholder commit Waste, whereby a Forfeiture accrueth to the Lord, who afterwards accepteth of Rent ; this doth not bar the Lord, but he may enter for the Forfeiture of the Tenant, notwithstanding the Acceptance of the Rent. *M. 29 Eliz. in B. R. Godbolt 47.*

*Forfeiture
and Acceptance.*

If a Copyholder forfeit his Estate, and then surrenders to the Lord who accepts it, not knowing of the Forfeiture ; yet this is no Dispensation of the Forfeiture. *Hill. 4 Car. 1. Rot. 496. B. R. Matthews and Whettons Case. Cro. 1. Par. 169.*

*Copyhold
extinct.*

A Copyholder in Fee took a Lease for Years of a Manor, resolved the Copyhold was extinct for ever, and
not

not only during the Lease: *Hide and Newports Case, Mores Rep.*

If a Feme Copyholder in Fee take an Husband, who makes a Lease for Years contrary to the Custom; after the Husband's Death, this Forfeiture shall not bind the Feme and her Heirs, but she shall have it again after her Husband's Death *non obstante* the Forfeiture, and so it was adjudged, *inter Savern and Smith* in the Exchequer. *Cro. Rep. 1 par. 7. Pasch. 1 Car. 1.* *Advantage to Feme Convert.*

A Copyholder in Fee surrendered to the Lord of the Manor his Copyhold Estate, and the Lord made a Lease for Years of the Manor and of the Copyhold, by the Name of his Tenement called *H.* and whether by this the Copyhold was determined or no, was the Question, and it was held that it was not; because when the Lord let the Manor, it was included as Parcel thereof; but if he had made a Lease for Years of the Copyhold by it self, that had destroyed the Copyhold, for it was then during that Time severed from the Manor, and so could never again be demisable by Copy. *M. 14 Car. 1. in B. R. Lee and Boothley's Case. Cro. 1 par. fol. 375.*

*Estate forfeited re-
vived.*

If a Copyholder make a Lease for Years, which is a Forfeiture at the Common Law, and after the Lord makes a Feoffment, or a Lease for Year of the Freehold of this Copyhold, in this Case the Feoffee or Lessee of the Lord shall not take Advantage of the Forfeiture; for the Lease of the Freehold made by the Lord before Entry, is an Assent that the Lessee of the Copyholder shall continue his Estate, and so it is in Nature of an Affirmance and Confirmation of the Lease. *M. 40 El. in C. B. Penn and Mericall's Case. Owen's Rep. fo. 63.*

*Copyhold
by Escheat
regranted.*

Every one who hath a lawful Estate or Interest in a Manor, be it in Fee-Simple, Fee-Tail, Dower, Tenant by the Courtesie, Tenant for Life, Tenant for Years, Guardian, Tenant by Statute-Merchant, Staple or *Elegit*, Tenant at Will and Sufferance; if a Copyhold escheat or come into their Hands during the Time, they may regrant it, and it shall bind the Lord, because every one of them is *Dominus pro tempore*. *Co. on Lit: 58. Ca. 4. Rep. 28, 29.*

If a Copyholder accept of a Lease for Years of his Copyhold, by this
his

his Copyhold Estate is determined.

29. *Eliz. Lanes Case. Co. 2. Rep. 16.*

If the Fine of Copyholders of a ^{Reasonable} Manor upon Admittance be incert- ^{Fines.}tain, yet the Lord cannot demand or exact unreasonable and excessive Fines, and if he do, the Copyholder may by the Law deny to pay them, and it is no Forfeiture; and it shall be determined before the Judges upon Proof of the Value of the Land what Fine was reasonable to be demanded; for if it should be otherwise, great Part of the Copyhold should be destroyed at the Will of the Lord, by exacting unreasonable Fines. *Co. 4. Rep. 27. Latche's Rep. f. 14. acc.*

If the Lord assess a reasonable Fine, ^{Reasonable} and require the Copyholder to pay ^{Time to} it, he is not bound to pay it pre- ^{pay it.}sently, because he could not know what the Lord would assess, & *nemo tenetur divinare*; and he shall therefore have reasonable Time to pay it in, if the Lord limits no Time; but it is otherwise of a Fine certain. *Co. 4. Rep. f. 27.*

Note, That no Fine is due to the ^{Not till} Lord, either upon Surrender or De- ^{Admis-}scant, until Admittance, for that is ^{tance.}the Cause of the Fine; and if after the Tenant deny to pay it (if it be a reasonable

reasonable Fine) it is a Forfeiture of his Copyhold. *Bacon* and *Flatmans Case*, and *Sands Case*, so resolved. *Vid. Co. 4. Rep. f. 28.*

Deferring of Services. If a Copyholder come not to do his Services, although he were often demanded to do them, but still puts off from Time to Time to do them, although he do not absolutely refuse, yet this deferring is a Forfeiture. *Pasc. 2 Car. 1. in B. R. Johnson's Case, Latches Rep. f. 14.*

What Fine. The Lord of a Manor assessed two Years and a half Value of the Land according to the raked Rent, for a Fine upon the Grant of a Copyhold, and for Non-Payment thereof entred for a Forfeiture: And it was held by the Court of *King's-Bench* that the Fine was unreasonable, and that one Year and an half of improved Rent was high enough, and therefore the Lord's Entry for the Forfeiture was adjudged unlawful. *Hill. 5 Car. 1. in B. R. Dove and Goldings Case, Cro. 1 par. 142. L. L. ibid.*

*Fine certain ten-
dred.*

The Lord assessed a Fine of twelve Pounds to be paid by a Copyholder, and appoints it to be paid at his Capital Messuage of the Manor three Months after, and the Copy-

Copyholder pretending the Fine to be certain (that is to say, two Years Quit-Rent) offered the same at the Day of assessing the other Fine; but at the appointed Place for the Payment thereof, cometh not thither to excuse his Non-Payment, nor make any other Refusal, and it was held to be a Forfeiture of his Copyhold; But if he had come at the Day assigned him for the Payment, and had then tendred the two Years Quit-Rent, being the Fine certain according to Custom, though not assess'd nor demanded by the Lord, it had not been a Forfeiture. 2 Cro. 617. *Latch. Rep.* 122.

It was adjudged that Copyhold Land were within the Statute of ^{Statute of} Limita-
tion. 21 *Jac.* 1. for Limitation of Entries ^{tion.}
within 20 Years. *Pract. Reg.* 170.
But see the late Act 4 & 5 *Anna*,
to commence an Action within a
Year upon such Entry or Claim.
But that Copyhold is not within the
Statute of 12. *Car.* 2. touching Guar-
dians, *Idem.* 171. *vide* 3 *Lev.* 395.
2 *Lut. Ent.* 1189. 1140.

Tenants by the Verge,

Are after the same Nature as Tenants by Copy of Court-Roll, but they are so called; for that when they will surrender their Tenements into the Lord's Hands unto the Use of another, they have a little Rod, which by Custom of the Manor they deliver unto the Steward or Bailiff, and he which takes the Lands receives the Rod in Court from the Steward in the Name of *Seisin*, and therefore they are called Tenants by the *Verge*: Yet they have no other Evidence but Copy of the Court-Roll.
Lit. Ten. Lib. 1. cap. 10.

Tenants in Coparcenary.

There are Two Kind of Tenants in *Coparcenary*, that is, Parceners at the Common Law, and Parceners by Custom.

After the Course of the Common Law, when a Man or Woman is seised in Lands or Tenements in Fee-Simple, or Fee-Tail, and hath no other Issue but Daughters, and dieth: The Tenements descend to the Daughters equally as Coheirs,
 and

and they shall enjoy every one an equal Part thereof as Tenants in Parcenary or Copartnership, and are all as it were one Heir to their Ancestor: And these Coheirs or Parceners may have a Writ, called *Breve de Partitione facienda*, to have the Lands equally divided and shared amongst them.

If a Man seised of Lands die without Issue, and the Tenements descend to his Sisters; or if he hath no Sisters, and it descends to his Aunts: They be Coheirs or Parceners as aforesaid. Sisters. Aunts.

If there be Two Parceners, one marries and hath Issue and dieth, and afterwards her Husband holdeth one half, as Tenant by the Courtesie; the Coheir or Parcener that surviveth, and the Tenant by the Courtesie, may make Partition between them: And if the Tenant by the Courtesie will not consent thereunto, the surviving Parcener may compel him by a Writ *de Partitione facienda*. Tenant by Courtesie.

But if the Tenant by the Courtesie desires to have Partition, and the Parcener surviving will not agree to it; the Tenant by the Courtesie can have no Remedy: For he cannot have a Writ *de Partitione facienda* against

against the surviving Parcener, although the Parcener may have it against him. See the late Acts concerning *Partition*.

Parceners by Custom.

*Parceners
by Custom.
Gravel-
kind.*

This Tenure is Gravelkind, and is only used in *Kent*, except in some certain Places in *England* besides, and in *North Wales*. But the Men of *Kent* only claim this as a Right remaining unto them unconquered; and it is thus: If a Man be seised in Fee-Simple or Fee-Tail in Lands or Tenements of the Custom and Tenure of Gravelkind, and hath Issue divers Sons and dieth; all the Sons shall be *Cob heirs*, and equally inherit those Lands and Tenements as Females do, and may make Partition by Writ *de Partitione facienda*, and divide, as in the Case of Daughters at the Common Law.

Grant of *Borough-English* Lands to one and his Heirs for Three Lives, the Youngest Son shall be Heir.
2 *Lev.* 138.

Otherwise in Gravelkind, of Rent granted out of it, it should go amongst all as the Land should. *Idem.*
87.

A Rent *de Novo* granted out of Gravelkind Land, shall descend according to the Descent of Land. *1 Mod. Rep. 96. 86.*

Joint-Tenants.

When a Man being seised of certain Lands and Tenements, doth thereof enfeoff Three or Four, or more, to have and to hold to them and their Heirs, or to hold to themselves for the Term of their Lives, or for another's Life, and they become seised by Vertue of that Feoffment: These are said to be Joint-Tenants. *Joint-Tenants.*

Likewise if Two or more disseise another of any Lands or Tenements to their own Use, the Disseisors be Joint-Tenants; but if it be but to the Use of one of them, they be not Joint-Tenants. *Disseisors.*

Now the Nature of Joint-Tenants is, that the whole Estate shall go to the Survivor.

As if there be Three Joint-Tenants in Fee-Simple, and the one of them hath Issue and dieth, the Two that survive shall have the whole Tenements, and nothing thereof shall go to the Issue of him that is dead: And if the

Survivor. the second Tenant have Issue and die, the Third who is the Survivor shall enjoy the whole, and shall have it in Fee-Simple to him and his Heirs.

Aliter if Copartners. But now there is a Difference in Tenants in Parcenary: For if there be Three Copartners, and one hath Issue and dieth before there be any Partition made, that Part which belonged to her that is deceased, shall descend to her Issue. And if such a Parcener die without Issue, her Part shall descend to her Cobeirs: So that this they have by Discent, and not by Survivorship as Joint-Tenants have.

Survivorship. And as the Survivorship taketh Place among Joint-Tenants, so it doth amongst all Persons who have Joint-Estate, or Possession with others in Chattels Real or Personal.

Upon a Lease. As, if a Lease be made to several Persons for Term of Years, the Survivor of the Lessees shall enjoy all the Tenements during the Term by vertue of the Lease.

Of Goods, &c. And in like manner Goods and Chattels Personal, whereof there be Partners, shall go to the Survivor. And if a Bond be made to many Persons

sons for one Debt, and some of the Obligees die, the Survivor shall have all the Debt: And so it is in all Covenants and Contracts amongst Partners.

There may also be Joint-Tenants for Term of Life, and yet they have several Inheritances.

If Lands be given to Two Men to hold to them for Term of their Lives, and to the Heirs of their Two Bodies, here these Donees are Joint-Tenants for Term of their Lives, and have several Inheritances: For if one of them have Issue and die, the Survivor shall enjoy the whole during his Life by Survivorship. And if the Survivor have also Issue and die, then the Issue of them both shall enjoy the Estate equally between them, as Joint-Tenants.

Now the Reason why these are said to have several Inheritances, is because it is impossible for them to have an Heir between them, as a Man and Woman may have.

Therefore the Law maketh this Distinction according to Reason and the Form of the Gift; that is, to the Heirs that one getteth on the Body of his Wife; and so likewise of the other; so that by this Reason it must of

of necessity be, that they have several Inheritances.

One Donee dying.

And if after the Death of the *Donees*, the Issue of one of the *Donees* die also, leaving no Issue of his Body surviving, in this Case the *Donee* or his Heirs may enter into the Moiety of the Lands, as in his Reversion, though the other of the *Donees* hath Issue living.

Simile between Females.

In like manner, if Lands be given to Two Females and to the Heirs of one of them; in this Case, the one of them, that is, she that hath it but for Life hath a Freehold: And the other hath a Fee-Simple: And if she that hath the Fee die, the other who hath the Freehold shall enjoy the whole during her Life, by Vertue of her Survivorship.

And if Tenements be given to Two, and to the Heirs to be ingendred of the Body of one of them; here the one hath Freehold, and the other Fee-Tail.

One grants a Rent-charge to the other.

If there be Two Joint-Tenants, and they are seised of an Estate in Fee-Simple, and the one by Deed grants a Rent-charge to another out of that Part which appertains to him; now during the Life of the Grantor, this Rent-charge is Good and Effectual, but

but it becomes void after the Death of the Grantor: For the Tenant that surviveth shall hold all the Land by Survivorship, discharged from the Rent-charge of the other.

If there be Two Joint-Tenants for Life, and one lets his Part for Years, rendring Rent, and dies, the Term shall continue against the Survivor, but the Rent is gone. *Finch Lib. 1. cap. 3. p. 13. Dyer 187.*

But amongst *Cokeirs* or *Parceners* it is otherwise: For if there be Two *Parceners* in Tenements in Fee-Simple, and before Partition one chargeth his Part by his Deed with Rent-charge, and dieth leaving no Issue, whereby his Moiety descends to the other Partner; here that Part shall not be freed of the Rent-charge, because he cometh to this Moiety by Discent as Heir at Law.

*Differ. nec
between
Cokeirs
and Co-
partners.*

If Joint-Tenants be desirous to make Partition between them, they may do it by Consent and Agreement amongst themselves; and such Partition is good and binding against each other: But unless it be done by mutual Consent amongst themselves, the Law cannot enforce or compel them, or either of them, to do it; because Joint-Tenants cannot

*Partition
by Consent.*

not

not have a Writ *de Partitione faciendā*, as Tenants in Copartnership may have. But see the late Statutes.

*Husband
and Wife
are but
one.*

If there be a joint Estate of Lands and Tenements made to a Man and his Wife, and to a Third Person; here the Third Person shall have as much as the Man and his Wife, that is, one Mojetty: For the Man and Wife can have but half the Estate, because they are but one Person in Law.

In like manner it is if Lands were made to a Man and his Wife, and to Two others; here the Man and Wife can have but a third Part, and the Two others the other Two Parts.

Tenants in Common.

*Tenants in
Common.*

Such as have Lands and Tenements by several Titles, and not joint Title, and none of them knoweth what is several to him, whether it be in Fee-Simple, Fee-Tail, or for Term of Life; these are said to be Tenants in Common, because they ought by such Law to hold, enjoy and occupy the Lands and Tenements in common and undivided, and to take the Profits in common; and to come to
the

the same Lands and Tenements by several Titles, and not by one joint Title.

If a Man enfeoff Two Joint-Tenants in Fee, and one of them *aliens* his Part to another in Fee; this *Alienee* and the other Joint-Tenant be Tenants in Common, because they now stand seised by several Titles; the one Joint-Tenant by vertue of the first Feoffment made to him; and the other Joint-Tenant and the *Alien* becomes seised in his Moiety by vertue of the Feoffment of the other Joint-Tenant; so that the several Feoffments make their Titles several, whereby they become Tenants in Common.

If there be Three Joint-Tenants, and one of them *aliens* his Part to another Person in Fee, here the *Alienee* is Tenant in Common with the other Two Joint-Tenants, and of the other Two Parts the Two Joint-Tenants be seised jointly, and the Survivor of them shall have the whole of those Two Parts by vertue of Survivorship.

If there be Two Joint-Tenants in Fee, and one of them gives his Part to another in Tail, here the *Donee*,
and

and the other Joint-Tenant become Tenants in Common.

Simile.

Also if Lands be given to Two Men, and to the Heirs of their Two Bodies; in this Case, these *Donees* have a Joint-Estate during their Lives; and if both of them have Issue and die, both their Issue shall hold the Land as Tenants in Common.

If Lands be given to Two Men and their Heirs, to hold to each a Moiety, these are Tenants in Common.

*Between
Feoffor a
Feoffee.*

If a Man being seised in a certain Lands, doth enfeoff another in the half of it without limiting of the same half in Severalty at the Time of the Feoffment made; that is, do not distinguish that half from the other by particular Bounds and Limits; in this Case, the *Feoffor* and the *Feoffee* shall hold their Parts of those Lands in Common.

*Difference
between
Tenants for
Life and in
Common.*

And as it is amongst Tenants in Common in Lands or Tenements in Fee-Simple or Fee-Tail, in the same Nature it is also between Tenants for Term of Life: As if there be Two Joint-Tenants seised in Fee, and one of them lets to a Man his Part for Term of his Life, and the other Joint-

Tenant lets to another Man his Part for Term of Life ; these Two Lessees be Tenants in Common for the Term of their Lives.

Likewise if a Man lets Lands unto Two Persons for the Term of their Lives, and the one of them grants all his Estate of the Part belonging unto him unto a Third Person ; then this Third Person to whom this Grant is made, and the other Tenant for Term of Life, be both Tenants in Common during the Lives of both the Lessees. *One grants away.*

If there be Three Joint-Tenants, and one of them releaseth all his Right which he hath in the Land by his Deed to one of his Fellows, then he to whom the Release is made, hath the third Part of the Lands by virtue of that Release, and shall hold that third Part with himself and his Fellow in Common, and they Two shall hold the other two Parts jointly. *One releases.*

Also if a joint Estate be made unto a Man and his Wife, and to a third Person, and that third Person releaseth his Right which he hath in that Estate to the Husband ; then the Husband hath the third Person's Moiety, *Simile to the Husband.*

Moiety, and the Wife hath nothing therein at all.

*Simile to
the Wife.*

And if such third Person release his Right in his Moiety to the Wife, not naming her Husband in the Release; then the Wife hath the third Person's Moiety, and the Husband hath nothing at all in it, but only *Jure Uxoris*, in the Right of his Wife; because the Release shall work to invest the Estate in the Person to whom the Release is made, of all that appertained to him that made such Release.

*Tenants in
Common by
Prescription.*

There may be also Tenants in Common by Title of Prescription; that is, when Two have holden Lands Common undivided; the one, one Half from his Ancestors; and the other, the other Half from his Ancestors, or from whom the Estate is derived unto them undivided, Time whereof the Memory of Man hath not known the contrary: These are Tenants in Common, by Title of Prescription.

*What Affi-
on by them,
&c.*

Now these Tenants in Common ought in some Cases to have for the Maintenance of their Possession several Actions; and in some Cases they shall all join in one Action: For if there be Two Tenants in Com-
mon

mon, and they be disseised, they Two cannot bring against the Disseisor one Assize in both their Names, but they must have against him Two Assizes: For every of them ought to have an Assize of his half, because the Tenants in Common are seised by several Titles.

But amongst Joint-Tenants it is otherwise; for if there be never so many of them, and they be disseised, they shall have but one Assize in all their Names, because they have all but one joint Title.

It hath been formerly held, that an Action on the Case lay not for one Tenant in Common, &c. against another who disposes of the whole, 1 Lev. 29, &c.

But by the late Act, for Amendment Stat. 4 & 5 of the Law, 4 & 5 Annæ, it is enacted- Ann. ca. 16. That Actions of Account may be brought and maintained against the Executors and Administrators of every Guardian, Bailiff, or Receiver, and also by one Joint-Tenant, and Tenant in Common, his Executors and Administrators against the other, as Bailiff, for receiving more than comes to his just Share or Proportion, and against the Exe-

cutor and Administrator of such Joint-Tenant, or Tenant in Common.

*Tenants by
divers De-
scents.*

There is likewise a Difference in suing real Actions between Partners that be in divers Descents, and Tenants in Common. For if a Man who is seised in Lands in Fee dieth, leaving only Two Daughters his Coheirs, and these Two Daughters enter, and have each of them a Son, and die without making any Partition between them, so that the Lands descend equally to their Two Sons, the one Moiety to one of them, and the other unto the other, and they enter and enjoy the same in Common, and be disseised; they shall not in this Case bring two Assizes, but one Assize in both their Names: For though they came in by divers Descents, yet they be Parceners, and a Writ *de*

Partition.

Partitio facienda lieth between them. Nevertheless they be not Parceners by Reason of the Seisin and Possession which they have from their Mothers, but in Respect to their Estate which descended to their Mothers from their Grandfather.

Parceners.

And so in Respect and Consideration of their first Descent that was to their Mothers, they have a Title in Parcenary

Parcenary which maketh them Parceners ; and they be but as one Heir to their common *Ancestor*, their Grandfather, from whom the Land descended to their Mothers. And therefore before Partition made between them, they should have but one Assize, though they came in by several Descents.

And likewise in Personal Actions, *Personal Actions.* in Trespass, and such like Cases which concern their Tenements in Common, the Tenants in Common ought to bring such Personal Actions jointly in all their Names ; as for breaking their Houses, Closes, or Pastures ; wasting, treading down, or otherwise spoiling the Grass ; cutting or felling of their Woods ; spoiling their Fruit-Trees, fishing in their Ponds, and such like. In these and all such kind of Actions wherein they are jointly concerned, the Tenants in Common shall have one joint Action, and recover Damages jointly.

Likewise if Two Tenants in Common make a Lease of their Two Tenements to another for Term of Years, reserving unto themselves a certain Yearly Rent ; if the Rent be in Arrear, they shall have one Acti- *Lease by them.*

on of Debt for the Rent against the Lessee in both their Names, and not divers Actions.

*Tenants in
Common by
divers Ti-
tles.*

If Two Persons or more have Chattels Real or Personal in Common and by divers Titles, if one of them die, the other who survive shall not have his Part that is dead in those Chattels by Survivorship, but the Executors of him that dieth shall hold and enjoy his Part with them that survive, as the Testator did or ought to have done in his Life-time.

Ejectment.

If Two Persons have an Estate in Common for Term of Years, and one of them puts the other out of his Possession, and enjoys all himself; then he that is so put out of Possession, may bring his Ejectment against the other for his Moiety.

*Chattels
Personal.*

But if Two Persons be possessed of Chattels Personal in Common by divers Titles, as of an Horse, or an Ox, or a Cow, or the like, and one of them takes it into his own Possession from the other; now the other hath no Remedy, but to take this from him that hath done him the Injury again, to occupy in Common, when he hath an Opportunity; that is, in plain Terms, he may come by it as well as he can.

There

There are also Tenants in Ancient *Other Tenants*
Demefn.

Of whose Tenures and Privileges you may read at large in Mr. *Danver's* General Abridgment, 657, &c. *Tit' Ancient Demefn.*

There are also feveral other Tenants besides the afore-mentioned, as Tenant by Elegit, Tenant by Statute-Merchant, Tenant by Statute-Staple, Tenant in Mortgage, &c.

Some Observations as to Mortgages.

That where Lands are mortgaged thrice over, the third Mortgagee may buy in the first Incumbrance to protect his own Mortgage, and he hath both Law and Equity for him. *2 Ven. 338.*

That he shall hold the Land against the second Mortgagee until he be satisfied both the Money he paid the first Mortgagee, and also his own which he lent upon the last Mortgage. *Ibid.*

But where only part of the Lands are mortgaged to the First, and the whole to the Second, and after to the Third; if the Third buys in the first Title, it shall protect only that Part that is in the first Mortgage. *Id.*
339. D 4 That

That a Purchaser or Mortgagee coming in upon a valuable Consideration without Notice, and purchasing a precedent Incumbrance, it shall protect his Estate, though he purchased in the Incumbrance after Notice of a second Mortgage. *Ibid.*

Relief.

That Mortgages are not relievable in *Chancery* after 20 Years, for the Statute of 21 *Jac.* 1. c. 16. limits the Time of Entry to that Number of Years, &c. *Idem* 340.

That upon a Mortgage in Fee the Redemption-Money shall be paid to the Executor, and not to the Heir, *Id.* 348, 351.

That the Court of *Chancery* cannot shorten the Time that is given by express Covenant and Agreement of the Parties, but when that Time is past, then the Practice is to foreclose. *Id.* 365.

C H A P. II.

Of Leases, Covenants and Conditions ; Priviso's and Reservations, Surrenders and Assignments of Leases.

IN all Leases, as we have said before in the Title of *Tenant for Term of Years*, there must be Lessor and Lessee : He which demises or lets Land to Farm, is the Lessor ; and he who takes the Land, that is, unto whom it is so let or demised, is called the Lessee ; in more vulgar Terms understood by the Country Farmer by the Title of *Landlord and Tenant*.

According to our general and common Acceptation now-adays, every Lessee for Life, Years, or at Will, though it be but of a Cottage, or never so small a Tenement or House, is called a Firmor or Farmer, and the Premisses a Firm or Farm ; and so we say in the Writ, *A firma sua Ejecit* ; which may be the Reason they are called Farms.

But anciently the chief Messuage in a Parish or Country Town, was called by way of Pre-eminency by the Name of a Farm; and unto this Farm belonged great Demeasns of of all Sorts, as Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marishes, Furzes, Heath, and also Messuages, Houses, Tosts, Mills, and the like: And all these are comprehended under the Title of Lands. These *Demeasns* were used to be let out to others for Term of Life, Years, or at Will.

Demeasns.

These ancient Farms, (or Firms, which you will call them; which Appellation or Dialect differs according to the County: In *Essex*, *Norfolk* and *Suffolk*, they call them Firms and Firmors; but the West and best are called Farms and Farmors:) these Farms, I say, attained to this Title from the old *Saxon* Word *Fermion*, which signifies to feed, provide or yield Victuals; so that a Farmor signifies a Victualler; for anciently the Landlords did not receive Money upon their Leases for their Rent, but Corn and Victuals, being such as the Farm yielded of its Growth; until it came by Degrees into part Money and part Victuals;

*The Name
and Nature
is now al-
tered.*

Actuals; and at last, about the Time of King *Henry* the First, the Rent reserved was turned into Money, and so hath hitherto continued amongst most Men.

Yet amongst some, where the ancient Rents or Reservations are not altered, the Rent is in Corn or Actuals to this Day, especially in College and Church-Leases; and doubtless, many of those ancient Reservations received their utmost Period in the general Dissolution of the Religious Houses, to the no small Detriment of the industrious Farmer.

Co. 7 par. f. 23.

All Leases for Years reserving Rent, must be made of Lands and Tenements, whereunto the Lessor may come to distrein; so that a Rent cannot be reserved by a Common Person out of any incorporeal Inheritance, as Advowsons, Commons, Offices, Tythes, Fairs, Markets, Liberties, Franchises, and the like: But if a Lease be made by Deed in Writing of one of them, one may have an Action of Debt by way of Contract, but one cannot distrein: But if any Rent be reserved in such Cases upon a Lease for Life, it is utterly void. *Co. 1. par.*

Inst. p. 47.

A Tenant

Rent by
way of
Contract.

A Tenant for Life leased for Years, the Lessee assigns to him by Parol, without Deed, rendring Rent: It was said by the Chief Justice, That although this Assignment by Operation of the Law turn'd to a Surrender, and it was not an express Surrender; and if the Rent was not good by way of Reservation, it was good by way of Contract; and so Judgment was given for the Plaintiff, although all the Days were not pass'd. 2 Lev. 80.

Every
Quarters
Rent.

Note that every Quarters Rent is a several Debt, and distinct Actions may be brought for each Quarters Rent. 1. Ventr. 129.

Payable by
Executor.

Also a Debt for Rent is payable by an Executor before Bonds, because it savours of the Realty, and is maintained in regard of the Profits of the Land received. *Id.* 184.

Action of Debt lies for the Lessor against an Assignee of a Moiety of the Land, for the Moiety of Rent. 2. Lev. 231.

Leases for Term of Years are Chattels; so that if a Man have a Lease of Lands for Five hundred Years, it is a Chatrel, and goes to his Executor or Administrator, if he dispose

dispose not otherwise of it before his Death. 23 *Lib. Ass.* 6.

That a Lease for Years, although it be a very long Lease, cannot be entailed (but may be assign'd in Trust to several Uses, which may be an Entail in Effect): For the Nature of a Chattel cannot be turned into an Inheritance. *Pratt. Reg.* 400. *Idem* 401. *Long Leases.*

That if a Lease for Years comes to be limited in Tail, the Law allows not a present Remainder to be limited thereupon; yet it will allow a future Estate arising upon a Contingency only; and that to wear out in a short Time. By the Lord Chancellor *Finch*, in the Duke of *Norfolk's* Case. *Fo.* 27.

Every Man who is seised of Lands in Fee-Simple, may lease out his Lands for what Time or Term he pleaseth himself: And so likewise might Bishops have done formerly, before the Statutes restrained them. 32 *H. 8. c.* 28. 13 *El. c.* 10. 18 *El. c.* 6.

A Tenant in Tail being at Age, *By Tenant* may by Deed in Writing lease out *in Tail.* such Lands as have been let to Farm twenty Years next before the Lease made,

made, reserving the old Rent or more, the Words [*Without Impeachment of Waste*] must be omitted in it, and it must commence from the Day of the Making or Date. And if there be an old Lease in being, it must be surrendred, expired or ended within one Year after the making of the new one, or else it is void.

Issue bound. And a Lease thus made, binds the Issue of the Tenant in Tail, if he die before the Term be out: But if the Tenant in Tail die without Issue, the Donor may avoid the Lease by his Entry, and so may he in Remainder; and though he accept the Rent, yet he doth not thereby confirm the Lease. *Vide 1 Jac. c. 3. Hens Com. 62. 67, &c.*

*Of his
Wife's
Land.*

A Man that is seised of Lands in Fee-Simple or Fee-Tail in the Right of his Wife, may make a Lease by Indenture in Writing of his Wife's Land, in the Name of himself and his Wife, and she to seal thereunto, reserving the Rent to himself and his Wife, and to the Heirs of his Wife; this Lease shall be good against the Woman and her Heirs after her Death.

*By Bishops,
&c.*

Bishops, Deans and Chapters observing the Rules, may make Leases

Leases of such Estates as they are seised of in Fee, in Right of their Churches : And so may Masters, Provosts, and Fellows of Colleges, and Wardens of Hospitals, if they be not prohibited by the private Statutes of their Foundations. *Vide* 32 H. 8. cap. 28. &c. as follows :

LEASES, by Statute Law.

I. Stat. 32 H. 8. 28. Leases made by *By Tenant*
 Tenant in Tail, or by him who is *in Tail,*
 seized in the Right of his Wife or *&c.*
 Church (they being of full Age at the
 Time of such Lease made) shall be
 good and effectual in the Law a-
 gainst the Lessors, their Wives,
 Heirs and Successors.

II. The Statute shall not extend *To what*
 to any Lease to be made of Lands, *Leases it*
 in the Hands of any Farmer by *shall not*
 Force of any old Lease, unless such *extend.*
 old Lease expired within a Year af-
 ter the Making of the New ; nor
 to any Grant to be made of any
 Reversion of Manors, Lands, &c.
 nor to any Lease of such Manor,
 Lands, &c. which have not been
 let to farm, or occupied by Farmers,
 twenty Years before such Lease
 made ; nor to any Lease to be made
 without

without Impeachment of Waste, nor to any Lease to be made for above Twenty-one Years, or Three Lives, from the Day of the Making thereof; and that upon every such Lease, there be reserved so much Yearly Rent, as hath been usually paid for the Lands so let, within twenty Years next before such Lease made; and the Réversioners of the Manors, Lands, &c. so let (after the Death of such Lessor or his Heirs) may have such Remedy against such Lessee, his Executor and Assigns, as such Lessor might have had against such Lessee.

*Leases by
Husband
of the
Wife's
Lands.*

III. Provided, That all Leases made by the Husband of Manors, Lands, &c. (being the Inheritance of the Wife) shall be made by Indenture, in the Name of the Husband and Wife, and she to seal to the same, and the Rent shall be reserved to the Husband and Wife; and the Heirs of the Wife. And here the Husband shall not alien or discharge the Rent, or any Part thereof, longer than during the Coverture, unless it be by Fine levied by Husband and Wife.

IV. This

IV. This Act shall not extend to *Farms.* give Liberty to take more Farms or Leases, than might have been taken before this Act. (*vide Stat. 25 H. 8. c. 13. Sheep*) nor to any Parson or Vicar to make any Lease otherwise than they might have done before.

V. All Leases for Years made *Leases reserved.* within three Years, before the 12th of April, in 31 H. 8. by Writing indented under Seal of any Person or Persons of full Age, *same Memory,* not unlawfully coerced nor Covert Baron, of any Manors, Lands, &c. wherein he or they have an Estate of Inheritance to his or their own Use at the Time of the making thereof, and whereof the Lessee or Lessees, or their Assigns, have now the Possession by Force of such Lease or Leases, and no Cause of Re-entry or Forfeiture thereof had or made, shall be good in Law against such Lessors, their Heirs and Successors; so as so much Yearly Rent be reserved for the same, as was paid for the same within 20 Years next before the Making of such Lease or Leases; or else such Lease or Leases to be of no other Force, than they were before the making of this Act.

*Fines, &c.
by Hus-
band.*

VI. No Fine, Feoffment, or other Act done by the Husband only, of the Inheritance of Freehold of the Wife, shall make any Discontinuance, or prejudice the Wife or any other, who is to enjoy it after her Decease; the Fines levied by the Husband and Wife only excepted.

*Husband
and Wife.*

VII. This Act shall not give Liberty to the Wife or her Heirs, to avoid any Lease hereafter to be made of the Wife's Inheritance, by the Husband and Wife for One and twenty Years or under, or Three Lives; whereupon the accustomed Yearly Rent for twenty Years before is reserved, according to the Tenor of this Act.

VIII. This Act shall not extend to make good any Lease, made by any Ecclesiastical Person, which is made void by Authority of Parliament, by or any such Person or other now attainted of Treason.

*Estates by
Bishops.*

IX. Stat. 1 Eliz. not printed. All Estates made by any Archbishop or other Bishop of any Manors, Lands, &c. Parcel of the Possessions of their Bishoprick, or united or appertaining thereunto, to any Person or Persons, Body Politick or Corporate, other than to the Queen, her Heirs and

and Successors, and other than for the Term of One and twenty Years or Three Lives, from the Time of such Estate made, and whereupon the accustomed Yearly Rent or more shall be reserved and payable Yearly, during such Term of One and twenty Years or Three Lives, shall be void to all Intents and Purposes.

X. Stat. 13 El. 10. All Leases, Conveyances, or Estates made by any Master or Fellows of any College, Dean and Chapter, or any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having any Spiritual or Ecclesiastical Living, or any Houses, Lands, Tithes, or other Hereditaments, being Parcel of their College, Cathedral, Chapter, Hospital, Parsonage, Vicarage, or other Spiritual Promotion, or belonging thereunto, other than for One and twenty Years or Three Lives from the Making thereof, and whereupon the accustomed Yearly Rent or more shall be reserved and payable Yearly during the Term, shall be utterly void to all Intents and Purposes.

*By Masters
of Colleges,
Dean and
Chapter,
&c.*

XI. This

Leases excepted.

XI. This Act shall not make good any Lease or other Grant against the private Statutes of any College or Collegiate Church.

XII. This Act shall not extend to any Lease, hereafter to be made upon Surrender of a former Lease, or by Reason of any Covenant or Condition contained in any former Lease, and still continuing; so as the Lease to be made, contain not more Years than the Residue of the Years of such former Lease, nor any less Rent than is thereby reserved. See after.

Leases of Benefices, &c.

See after.

XIII. Stat. 13 El. 20. No Lease made of any Benefice or Ecclesiastical Promotion with Cure, or any Part thereof (and not impropriated) shall indure any longer than while the Lessor shall be ordinarily resident and serving the Cure of such Benefice, without Absence above 80 Days in any one Year; but that every such Lease, so soon as it or any Part thereof shall come into any Possession or Use above forbidden, or immediately upon such Absence, shall cease and be void; and the Incumbent so offending, shall lose a Years Profit of his Benefice, to be distributed by the Ordinary amongst the Poor

Poor of the Parish. Yet see *Deggs Pars' Counc'. 229.*

XIV. Provided, That every Par- *Parsons.*
son, allowed to have two Benefices, may demise one of them (upon which he is not most ordinarily resident) to his Curate only; but such Lease shall endure no longer than during such Curate's Residence, without Absence above 40 Days in any One Year.

XV. *Stat. 14 El. 11.* In the Statute of 13 *El. 20.* these Words [*So soon as it or any Part thereof shall come to any Possession or Use above forbidden, or*] repealed.

XVI. All Bonds, Contracts, Pro- *Parsons or Curates.*
mises, and Covenants hereafter to be made for suffering or permitting any Person to enjoy any Benefice or Ecclesiastical Promotion, with Cure, or to take the Fruits thereof (other than such Bonds and Covenants made for Assurance of any Lease heretofore made) shall be adjudged of such Validity (and no otherwise then) as Leases thereof made: The like Law is of Leases, Bonds, Promises, or Covenants made by Curates.

XVII. The Branch of the Sta- *Houses and Grounds excepted.*
tute of 13 *El. 10.* made to avoid certain Leases, made by certain Per-
sons

sons having Spiritual Livings, shall not extend to Houses situate in Corporations or Market-Towns, or the Suburbs thereof, nor unto the Grounds appertaining to such Houses, so as they be not the Dwelling-Houses of such Persons, nor have above ten Acres of Ground belonging to them.

Proviso.

XVIII. Provided, That no Lease shall be made, by Force of this Act, in Reversion, or without reserving the accustomed Yearly Rent at least, or without charging the Lessee with Reparations, or for longer Term than forty Years. Neither shall any such Houses be aliened, without purchasing presently after other Lands in Fee-Simple, of as good Value and as great Yearly Value as the Houses so alienated.

*Rent upon
Leases by
Colleges.*

XIX. Stat. 18 El. 6. Upon Leases made by Colleges in the two Universities, *Winchester* and *Eaton*, the Third Part of the Rent shall be reserved in Grain, to be delivered to them Yearly at Days prefixed, after the Rate of 6s. 8d. for a Quarter of Wheat, and 5s. for a Quarter of Malt, or under those Prices : Or it shall be in the Election of the Lessee to pay them in Kind, at the best Rates

Rates found in those several Markets respectively the next Market-Days, before the said Day prefixed for the Payment or Delivery thereof; and all Leases otherwise made, and all Bonds and Assurances given to the contrary, shall be void: Which said Grain, or Money, shall be expended for the Relief of the Commons and Diet of the said Colleges respectively without Fraud, in Pain of Deprivation of the chief Rulers of such Colleges respectively, and of all others consenting thereunto.

XX. This Act shall not extend *Exception.* to any Lease to be made by the President and Scholars of *St. John's Colledge in Oxford*, of the Manor of *Fisfield*, to the Heir-Male of *Sir Thomas White Knight*, late Alderman of *London*, and Founder of the said College.

Stat. 18. El. 11. All Leases made *Void* by such Persons as are mentioned in *Leases.* the *Stat. of 13 El. 10.* where another Lease is in being, and not to be expired, surrendred, or ended within three Years next after the making of such new Lease, shall be void: and all Bonds and Covenants for removing of any such Lease contrary to this Act, or to the said Statute

Statute of 13 El. 10. shall also be void. Howbeit, this Act shall not extend to any Lease or Leases heretofore made by any such Person or Persons.

Sequestration granted by the Ordinary.

XXII. After Complaint to the Ordinary, and Sentence given upon any Offence committed by the Incumbent against the Stat. of 13 El. 20. whereby he ought to lose the Profits of his Benefice; the Ordinary, within two Months after such Sentence given, and Request made by the Church-Wardens or one of them, shall grant the Sequestration thereof to such Inhabitant or Inhabitants there, as to him shall seem convenient; and upon Default in the Ordinary, it shall be lawful to every Parishioner there to retain his Tythes, and for the Church-Wardens to take the Profits of the Glebe, and other Rents and Duties of such Benefice to be imployed to the Use of the Poor, until the Sequestration shall be committed by the Ordinary, and then the Church-Wardens and Parishioners are to accompt to him or them to whom such Sequestration shall be committed, and he or they shall imploy the said Profits to such Uses, as by the said Statute of

13 *El.* 20. are appointed, in Pain to forfeit the double Value of the Profits with-holden, to be recovered in the Ecclesiastical Court by the Poor of the Parish.

XXIII. *Stat.* 43 *El.* 9. All Judgments hereafter to be had for the Intent to have or enjoy any Lease contrary to the Statutes of 13 *El.* 20. 14 *El.* 11. and 18 *El.* 11. or any of them, shall be deemed void, in such sort as Bonds and Covenants are appointed to be void, which are made for that Purpose. *Judgments void.*

XXIV. *Stat.* 12 *Car.* 2. *cap.* 31. *Leases confirmed.* Leases and Grants by Colledges and Hospitals, and Elections of Heads, Masters and Fellows, made during the late Troubles, confirmed under some Exceptions and Privileges.

XXV. *Stat.* 13 *cap.* 2. *Car.* 4. The King enabled to make Leases, Grants, and Copies of Offices, Lands, Tenements and Hereditaments, Parcel of the Dutchy of Cornwall, and a Confirmation of such as be made not exceeding One and thirty Years or Three Lives. *Dutchy of Cornwall.*

E

If

If Bishops, Deans and Chapters, observe not the aforesaid Rules in their Demises, yet their Leases shall be good against themselves for their Lives. *Vide Co. Lit. 45. a. 1 Brownl. 21. 1 Leon. 131.*

*Commence-
ments and
Determi-
nations.*

Generally a Lease for Year must be for a Time certain, and ought to express the Term, and when it should begin, and when it should end certainly; and therefore a Lease for a Year, and so from Year to Year, is a Lease for two Years.

*From Year
to Year.*

Also a Lease from Year to Year, so long as both Parties please; after Entry in any Year, is a Lease for that Year, &c. till Warning be given to depart. *Noys Max. 65.*

*Voidable
Leases.*

A Lease which is only voidable, and not absolutely void, must be made void by the Lessor's Re-entry (if he will), and putting out the Lessee: Or else it may be continued or affirmed by receiving the Rent. *Pract. Reg. last. pub. 399.*

So that where there is a Clause in a Lease, That if the Rent be behind and unpaid such a Day, &c. the Lease shall be void: Now if there was a Demand made at the Day, and the Rent not paid, this Lease is not absolutely void until an actual Entry, it is only voidable; and Acceptance

ceptance of the Rent before any Entry made, shall make that which was a voidable Lease, a good Lease. *Ibid.*

If a Lessee for Years grant a Rent-charge, and after surrender, yet for the Benefit of the Grantee, the Term hath Continuance; although in *Rei veritate* it is determined, and the Grantor himself shall not derogate from his own Grant, to make it void at his Pleasure. *Cook 8. Jac. 144.*

Rent-
Charge
and Sur-
render.

Tenant for Years of an Advowson granteth the next Avoidance and Donation, if the same Church should become void during the Term, &c. And afterwards surrenders his Term, yet if the next Avoidance be within the Term, the Grant is good, for the Years cannot determine; but the Effluxion of Time, and the Law implies a Limitation, if the Church do become void during the Term; *Quia expressio eorum quæ tacite in sunt nihil operatur. Idem.*

Simile of
Advowson.

A Lessee covenanteth for himself, his Executors and Administrators, with the Lessor; That he, his Executors or Assigns, shall build a Brick-Wall upon Part of the demised Premises, and afterwards the Lessee makes an Assignment of his Lease to C. D. for his Term; in this Case the

Covenants
to build,
&c.

Assignee is not bound to build the Wall, because the Things were only collateral, and were not *in esse*, nor Part of the Demise, &c. *Godb. Rep.* 69, 70. &c. 5 Co. 16, 17.

When a Covenant extends to a Thing in being Parcel of the Demise, then the Thing to be done by Force of the Covenant is annexed, and appurtenant to the Thing demised, and shall bind the Assignee, although by expresse Words in the Covenant he be not bound. *Vide* 5 Co. 17, 24. *Dyer* 27.

But if the Covenant extends to a Thing which had no Being at the Time of the Demise made, that cannot be annexed or appurtenant to a Thing which had no Being. *Ibid.*

To repair.

If a Lessee covenant to repair the Houses demised to him during his Lease; This is Part of the Contract, and shall bind the Assignee, although by the Covenant he be not expressly named. *Ibid.*

*Assignees
n.s. bound.*

But where the Covenant concerns a Thing not in Being at the Time of the Demise, but to be made after; this shall bind the Covenantor, his Executors and Administrators, but not the Assignee. *Ibid.*

If a Lessee covenant for him and his Assigns, to build a House upon the Land of the Lessor, which is not Parcel of the Demise, or to pay any collateral Sum of Money to the Lessor, or to a Stranger, this shall not bind the Assignee. *Ibid.*

If a Man demise Lands for Years, with a Stock of Cattle or Sum of Money rendring Rent; And the Lessee covenants for him, his Executors, Administrators and Assigns, to deliver the Stock of Cattle, or the Sum of Money at the End of the Term: This Covenant shall not charge the Assignee. *See after.*

Land and Stock of Cattle.

If an Assignee of a Lessee be evicted, he may have a Writ of Covenant; so shall a Tenant by Statute or by *Eleger*, or he to whom a Lease is sold by Vertue of an Execution.

Assignee evicted.

If a Man grant to a Lessee for Term of Years, that he shall have so many *Estovers* as shall serve to repair his House, or that he shall burn in his House or the like, during the Term; that is appurtenant to the Land, and shall run with the same as a Thing appurtenant, in whose Hands soever the same cometh. *1 Co. Inst. 41.*

Estovers.

The Statute extendeth only to Covenants which touch the Thing demised, and not to collateral Covenants. 32 H. 8. c. 24. *Vide ante*.

*Actions by
Assignees,
&c.*

An Assignee of an Assignee, Executors of an Assignee, Assigns of Executors, or Administrators of every Assignee, may have an Action of Covenant, for all are comprised within this Word [Assignees], and the same Right that was in the Testator or Intestate descends to the Executors or Administrators. *Cook lib. 5.*

A Lessor may have an Action for Rent against the Executor of the Lessee, after an Assignment made by him. 1 Leon 127. 2 Vent. 209.

If an Assignee assigns over, until Notice given of the Assignment to the Lessor and tender of Arrears, he cannot by the Assignment discharge himself of the Rent. 1 Lev. 215. But that the Executor of a Lessee may assign before Rent-arrear without Notice. 3 Lev. 295.

A Lessee for a Hundred Years being out of Possession cannot assign. 1 Lev. 270.

If a Lessor assigns his Rent upon a Lease for Years, and the Lessee attorns, it is said the Grantee may maintain

maintain an Action of Debt for Rent.

1 Lev. 22.

A Lease is made for Life, the Remainder over for Life, the Remainder over in Fee; the first Lessee maketh Waste: And because he in the Fee hath no Remedy by the Common Law, and Waste is a Wrong prohibited, he shall have Relief in Chancery. Crompton 49. b.

Waste relieved in Canc.

A Woman sole takes Consideration for making a Lease for One and Twenty Years, and then marries; and she and her Husband made the promised Lease at the One and Twenty Years End; the Lessee surrenders, and takes a new Lease for One and Twenty Years more, the Husband dies, the Wife *ousts* the Lessee, who sues in Chancery to have the first Lease continued for the first One and Twenty Years, and could not have Remedy, because the Surrender was voluntary, and the Court gives no Relief against a voluntary Act. 44 Eliz.

Not against a voluntary Act.

Concerning Leases, &c. by Baron and Feme, See *Danvers Gen. Abr. Tit. Baron and Feme*, fol. 698, 699, 700, &c.

The *LAW S* concerning

Also where a Man shall be relieved in *Chancery* against Deeds and Leases. See *Danver's General Abbridgment*, *Tit' Chancery*, and *Tit' Leases*.

*House-boot,
&c.*

A Lease is made of a House and Wood, wherein it is covenanted, That the Lessee should have House-boot and Fire-boot; by this it is implied and meant, that he shall not have any of the Woods to use, or convert to any other Purpose; but that they do belong to the Lessor: And the Lessor shall have help in *Chancery*, leaving to the Lessee sufficient for House-boot and Fire-boot.

*Of the
Word
[Land.]*

Under the Name of Lands, are comprehended not only Gardens, Meadows, Pastures, Rivers, Woods, Moors, Waters, Marshes, Furze and Heath, but also Messuages, Houses, Tofts, Mills, Castles, and such like. *Co. Lit. l. 1. c. 2. Sect. 14.* but of a House with the Appurtenances, no Land passes. *Pl. Com. 85. 6.*

*Determina-
tion.*

If one that leases at Will does any Act inconsistent with the continuance of the Lease at Will, it shall determine it from such Time as the Tenant at Will takes Notice of it.

If

If the Lessor says, the Lessee shall hold it no longer, the Lessee (as soon as he knows of the Words) may take Advantage of them as a Determination of the Will. 1 Ven. 247. Raym. 224. See after.

It was resolved that a Lease for a Year, upon no other Consideration than reserving a Pepper-Corn, if it be demanded, shall work as a Bargain and Sale, and so to make the Lessee capable of a Release. 1 Mod. 249. 1 Mod. 262. 2 Vent. 35. 10 Co. Sutton's Hospital Case; and that the Reservation made a sufficient Consideration to raise an Use, as by Bargain and Sale.

A Lease for 99 Years, if Two Persons so long live, determines upon the Death of either. 2 Vent. 74. 5 Co. 9. 2 Cro. 378. Dyer 67. & 1 Inst. 225.

Where several Lands held Part for Life, and Part for Years, are demised to A. for Years, to hold from the Time of the Death, Surrender, Forfeiture, or Determination of the Estate and Term aforesaid of the first Lessees, and the Estate in one of these Parols determines, the Term granted to A. shall commence immediately in the said Parcel, altho'

The LAWS concerning
the other Estates are in being. 1 Saund.
183.

Disseisor. If a Lessee enters before his Term commences, and continues in Possession after, he is a Disseisor all the Time. 1 Lev. 46.

Waste. Upon a Lease made to Two for their Lives, without Impeachment of Waste during the said Lessees Lives, it was held that this Privilege would hold to the Survivor; for 'tis reasonable to give the Privilege as large a Construction as the Interest, *Anderson* 251.

Sealing Lease. Note, If the Lessor seal the Lease, and not the Lessee, yet it is good against the Lessor as if both had sealed. *Noy's Max.* 57.

Principal and Counterpart. And if at any Time there happen any Variance between the Indentures, it shall be taken as the Deed of the Lessor is, and the other shall be intended only the Mistake of the Writer, because the Deed of the Lessor is the Principal, and the other but only a Counter-part. *Ibid.*

Deeds.

Deeds between Parties indented or not indented are suable and releasable by the Parties and not by Strangers, altho' they are to the Use of the Strangers. 3 Lev. 138.

To plead a Writing under a Man's Hand does not imply a Deed. *Ibid.*

234.

If a Man demise any Lands or Tenements to another by Lease Parol, the Lessor ought to be seised of the Lands or Tenements which he so lets at the Time of the Lease Parol made, or else he cannot maintain an Action for his Rent; for the Lessee may plead that the Lessor had nothing in the Premises at the Time of the Lease made, and then is barred of his Action: But if the Lease be made by Deed indented, then the Lessee cannot plead this Plea thereunto. *Lit. Ten. l. 1.*

If a Man lets Lands to another by Lease, to hold the same at the Will of the Lessee; the Law intends it to be at the Will of the Lessor also, and he may put the Lessee out when he pleases; likewise if it be let at the Will of the Lessor, it is intended at the Lessee's Will also, for the Lessor cannot force him to stay longer than he pleases. *Cook 1 part. Inst. 55.*

Covenants.

A Covenant made between Landlord and Tenant, that the Tenant shall have a new Lease upon the surrender up of his old Lease; and afterwards the Lessor makes a Lease by Fine for more Years to a third Person; in this Case the Lessor hath broke his Covenant, although the Lessee did not surrender: Which by the Words of the Covenant ought to have been the first Act; because the Lessor, by letting the Lease to a Stranger, did disable himself either to take the Surrender, or make the new Lease. *Noys Maximus, p. 13.*

Rent to

Executors.

Rent in Arrear upon a Lease for Years, goeth to the Executors of the Lessor if he die: As if *John Doe* makes a Lease for Years to *Richard Roe*, and the Lessee covenanteth and granteth to pay unto the Lessor, his Heirs and Assigns, the Sum of Twenty Pounds Yearly during the Term in the Lease granted: In this Case if the Lessor die, his Executors shall have the Rent in the Arrear, and not his Heirs.

Where a Man covenants for himself and his Assigns to permit, &c.
If

if a Breach be laid in the Assigns, this Covenant shall only relate to the Assigns after the Deed was made, and not before. *2 Vent. 278.*

Where Lessee covenanted to build Three Houses upon the Premises, and keep them in Repair, he built Five, and let one of them fall to decay, and 'twas adjudged that the Covenant extended to that also. *Id. 128. 3 Lev. 265.*

If a Man covenants not to inclose, Inclosure with Gaps is a Breach of the Covenant. *Lit. Rep. 267.*

A latter Covenant by a second Indenture cannot be pleaded in Bar to the former, but the Defendant must bring his Action on the last Indenture, if he will help himself. *2 Ven. 218.*

If a Man by Deed grants a Water-course, and stops it, the Grantee shall have an Action of Covenant. *1 Saund. 322.*

If a Lease be made of a House and Estovers, and the Lessor destroy all the

the Trees, the Lessee may have an Action of Covenant. *Id. ibid.*

Pump.

Also if a Lease be made of a House and a Piece of Land (except the Ground on which a Pump stands) with the Use of the said Pump, the Lessee may repair the Pump, but no Action of Covenant lies against the Lessor for not repairing it. *Ibid.*

When the Use of a Thing is granted, all is granted by which the Grantee may have and enjoy such Use. *Id.*

Executor.

Although the Breach of the Testator's Covenant is by the proper Default of his Executors; yet the Judgment ought to be of the Goods of the Testator. *Idem* 112.

Repairs.

An Action of Covenant does not lie against a Grantor for not repairing the Thing granted. 1 *Saund.* 322.

Action by Assignees, &c.

An Assignee of a Reversion may maintain Covenant for Repairs against the Lessee, although Assignees are not named in the Covenant in the Lease. 1 *Lev.* 109. Covenant lies for a Grantee of a Reversion against the Lessee after Assignment of his Term. 3 *Lev.* 233.

Any Words in a Deed purporting an Agreement to pay Money, &c. amounts

amounts to a Covenant to do it.

1 Lev. 48.

A Proviso to pay, amounts to a Proviso.
Covenant to pay. *Id.* 155.

Covenant that he or his Under-Tenant should not dig, &c. and B. who held of J. who holds of H. who held of E. did dig, &c. held B. was Under-Tenant of E. 1 Lev. 144.

A Lessee covenants with the Lessor, his Executors and Administrators, to repair; this shall go with the Land, and the Heir may sue upon it. 2 Lev. 92.

In expounding all Deeds, the Words and the Intent of the Parties ought to be observed, especially in Covenants. *Lit. Rep.* 209.

If there be a Covenant in a Lease, that if the Rent be behind and unpaid for such a Time (that is, by the Space of so many Days after the usual Day or Time of Payment in the Lease appointed and reserved) then the Lease to be void; in this Case, altho' the Lessor do accept of the Rent after such Failer made, here no such Acceptance of the Rent can make the Lease good. *Dyer* f. 51.

If a Tenant take a House and Land by Lease for Years, and covenants with the Lessor to support, uphold

hold and maintain the Houses during this Term, and to leave the Houses and Lands in as good Repair, Plight and Estate, as he found them: In this Case, if it should happen that the Houses be casually burned by Fire or Lightning, or blown down by a Tempest, or destroyed by any other Accident; if the Lessee do not repair and build them again, and leave them as good as he found them, the Lessor may sue his said Covenant against him at the end of his Lease; but if a Tenant make Waste in cutting of Wood or Timber contrary to the Proviso's, Exceptions or Covenants in this Lease, for such a Breach the Landlord may bring his Action of Covenant before the End of the Term. *Noys Max. p. 16.* See after.

Waste.

*Against
Assignee.*

A Man takes a Lease for Years, and covenants and grants to and with the Lessor, for him and his Executors, to repair the Houses as often as need requires: And afterwards the Lessee assigns over his Lease to another, and the Assignee suffers the Houses to decay for want of Repairs; in this Case the Lessor may bring an Action of Covenant against the Assignee, although he be not named
in

in the Covenant. *Hugh's Grand Abridgments*, 1 par. P. 492. c. 19.

A Landlord lets a Lease, and covenants with his Tenant that he shall have sufficient Hedge-boot, to be assigned him by the Landlord or his Bailiff: In this Case the Tenant may not take Hedge-boot without Assignment. *Co. 1 par. Inst. fol. 41.*

If a Man by Indenture take a Lease of a House that is old, ruinous, or wanteth Repairs, and covenants with the Lessor to leave this House at the end or expiration of the Lease in good Repair. In this Case he is bound to leave this House in good Repair; but if he do not covenant to do it, the Law then will not oblige him to do it. *Perkins Tit. Conditions*, 738.

How Houses are to be now built within the Bills of Mortality, according to the late Act of Parliament: See at the latter End of this Treatise.

A Man by Indenture takes a Lease for Years of a Wood, and covenants with the Lessor to leave his Wood in as good a Condition as it was at the Time of the Lease made: And during the Term the Wood is destroyed, and blown down by violent Winds and Tempests: In this Case.

Case the Landlord can have no Action against the Tenant for the not performing of this Covenant, because it is impossible for him to perform it; and the Law enforceth no Impossibilities: Otherwise it is if he take a House, and that be blown down. *Hughs grand Abridg. p. 499.*

Bonds forfeited for Rent.

Touching Bonds for Performance of Covenant, if a Man takes a Lease for Years rendring Rent, and enter into Bond to the Lessor to perform all Covenants and Agreements contained and comprized in the Lease; if he fail in Payment of Rent, the Bond is forfeited; for the Payment of Rent is an Agreement. *Goldsborow. p. 16.*

For Repairs.

If a Man be bound in a Bond to repair the House of the Obligee as often as need shall require during a certain Time, and afterwards the Houses want Reparations: In this Case, although the Obligor doth not know that they want Reparations, yet he is bound to take Notice of it at his Peril, for Ignorance will be no Excuse in this Case, because he hath bound himself to it. *Dr. & St. lib. 2. cap. 47.*

But

But if the Condition had been, that he should repair such Houses as he to whom he was bound should assign, and after he assigneth certain Houses to be repaired, but he that is bound hath no knowledge of that Assignment; this Ignorance shall excuse him in the Law, because he hath not bound himself to any Reparation in certain, but to such as the *Obligee* will assign; and if he assign none, the *Obligor* is bound to none: And therefore, because he that should make the Assignment is privy to the Deed, he is bound to give Notice of his own Assignment; but if the Assignment had been appointed to have been made to a Stranger, then the *Obligor* had been bound to have taken Notice thereof at his Peril. See more Observations on Covenants in Leases, &c. at the end of this Treatise.

If a Man makes a Lease for Years with Warranty, yet this is not a Warranty in the Law, but a Covenant, because the Lease is but a Chattel; and if the Lessee be ousted, he may bring his Action of Covenant against the Lessor.

If *A.* be seised of Twenty Acres of Land, and let the same to *B.* by Lease for Life or Years, and *A.* reserves

To repair
upon As-
signment.

Warranty.

Rent in
Suspense.

serves to himself Five Shillings Rent payable at *Christmas*, and *B.* binds himself to *A.* in a Bond of One Hundred Pounds to pay the Rent reserved upon the Lease justly according to the Law; if before any Day of Payment *A.* puts *B.* out of any Part of the Land, and he doth occupy the Residue for the whole Term, and will not pay any Rent, yet the Bond is not forfeited; for by putting the Tenant out of Parcel of the Land, the whole Rent is in suspence: But if one Day of Payment be past before the *Ouster*, then the Tenant must pay the Rent, or else he forfeits his Bond.

But if a Stranger who hath no Right in the Lands, do put out the Lessee for Years out of the same Land before any Day of Payment, and keep Possession thereof until the Day of Payment be past; in this Case the Tenant ought to pay his Rent at the Day whereon it is appointed to be paid, or else he forfeits his Bond. If Three

Copartners. *Copartners* be seised of a Manor, and One of them without Consent of the other Two lets a Lease of the whole Manor in her own Name unto *I. D.* for Five Years, paying Ten Pounds Yearly at *Christmas* unto the Lessor

Lessor and her Heirs, and I. D. enters into Bond in Five Pounds to pay the Rent accordingly, and before any Day of Payment is come, the other Two Copartners who agreed not to the letting of the Lease, do put the Lessee out of the whole Manor, and keep the Possession till a Day of Payment be come: Here the Lessee ought to pay a third Part of the Rent reserved to his Lessor, or otherwise he forfeits his Bond; because the other Two Copartners, who ejected him out, have Right but in two Parts of the Manor. *Perkins*, 828.

A Man makes a Lease to Three Persons upon this Condition, that neither they nor any one of them shall alien, set, or let that Lease to any other, without Licence first obtained from the Landlord. Now if the Landlord do give Licence to any one of them to let or alien, then the other Two may alien without Licence: For the Condition being determined to one, is determined to all. *Hughes Grand Abr.* 1 par. p. 428. See after.

In the same Nature is a Release where many Persons commit a Trespass, if he against whom the Trespass is committed do release one of the Trespassers, that Release is as effectual

fectual to all the rest, as if they had been particularly named therein.

*Action for
Arrears.*

If a Landlord do enter for a Condition broken, or the Tenant surrender up his Lease, or his Term be expired; yet the Landlord may have an Action of Debt for the Arrears of Rent if any be. *Noy's Max. p. 72.*

Not to alien.

If a Man lets a Lease of Lands upon a special Condition; that is, that the Lessee shall not alien the same to such a Man, or such a Man; then the Condition shall be taken according to the Words; and notwithstanding that Condition, they may be alienated to any other, but to them to whom it is expressly prohibited that the Lands should not be aliened unto: And if the Lands in that Case be aliened to one that is not excepted in the Condition, then he may alien the Land to him that is first excepted, without breaking of the Condition: For Conditions be taken strictly in the Law, and without Equity. *Dr. & St. l. 2. c. 35.*

As, if a Lease be made to *A.* upon Condition that he shall not let or alien the same to *B.* if the Tenant alien it to *C.* and he alien it to *B.* the Condition is not broken.

If a Man be seised of Lands in Fee, and let the same by Indenture of Lease to a Stranger, paying Five Pounds Rent *per Annum*, with a Condition, That if the Lessee will hold over Ten Years to him and his Heirs, that then he shall pay twenty Pounds *per Annum*, and the Indenture is executed by Livery and Seisin to the Lessee: In this Case the Lessor shall have an Action of Debt for the Rent in Arrear within the Ten Years; which proveth the Freehold and the Fee are not in the Lessee before the Ten Years expired: But after the expiration of the Ten Years, if the Lessee doth continue the Possession of the same Land, and doth occupy the same by vertue of the *Indenture*, then he hath Fee, and shall pay the twenty Pounds as the Rent-Seck. *Perkins 710. cap. 11.*

Lease executed by Livery and Seisin.

But if a Man seised in Lands doth let the same Land by Lease for Term of Life, yielding to him a Rose for the first Six Years; and if he will hold the Land over the Six Years, then to pay Three Marks *per Annum*; here the Freehold is immediately in the Lessee. *Co. 1 par. Inst. f. 218. b.*

When Freehold passes.

*When not
upon Con-
ditions.*

A Man makes a Lease for Years, with this Condition, That if the Lessor do alien the Reversion within the Term granted by the Lessee, then the Lessee shall have the Fee; and the Lessor doth alien the Reversion in Fee by Fine to a Stranger: In this Case the Lessee shall not have a Fee, for the Freehold and the Fee are lawfully in the Conuzee before the Lessee can take it by Condition: But if the Lessor had granted the Lands to a Stranger by Deed only, then the Lessee should have had Fee by the Condition. *Perkins, 729, 730.*

*Privy in
in Right.*

If a Man have a Lease for Years, and demise or grant the same upon Condition, and die; his Executors or Administrators shall enter for the Condition broken; for they are privy in Right, and represent the Person of the Dead. *Perkins, 833.*

*Rent not
acquitted
by Release.*

If a Man make a Lease for Years upon a Condition that the Rent shall be paid at *Christmas*, and before that Time come the Lessor give a general Release to the Lessee of all Actions and Demands; this Release doth not acquit the Lessee of the Rent, but the Lessor may sue for it, because it was neither due, nor to be paid at the Time of the Release made; and

and it is a Thing not meerly in Action, because it may be granted over. *Lit. lib. 3. c. 8.*

If a Landlord lets a Lease for Years to Two Tenants to hold jointly, with a Condition, that if the Lessees die before the End of the Term, the Lease shall be void: Now these Lessees makes Division, and one of them aliens his Part, and dies: In this Case the Lessor cannot enter upon the Part of him that died, but the Alienee shall enjoin his half-part during the Life of the surviving Lessee. *Dyer p. 67.*

A Lease made for Years upon Condition, that if the Lessee demise the Premises or any Part thereof, other than for a Year, to any Person or Persons, then the Lessor and his Heirs to re-enter; the Lessee afterwards devises this Lease to his Son by his Will: This is a Breach of the Condition.

Devise a Breach of Condition.

If a Man of his meer motion give Lands to H. H. and to his Heirs by Indenture, upon Condition, that he shall Yearly at a certain Day pay unto John at Style, out of the same Land a certain Rent; and if he do not pay the Rent, that then it shall be lawful to John at Style to enter; and if the

Who may take Advantage of a Condition.

F

Rent

Rent in this Case be not paid to *John at Style*, the said *J. S.* may not enter into the Lands by the Law, though the Words of the Indenture be, that he shall enter; for there is an ancient Maxim in the Law, That no Man shall take Advantage in a Condition, but he that is Party or Privy to the Condition: And this Man is not Party nor Privy, and therefore he shall take no Advantage of it. *Dr. & St. lib. 3. cap. 20. fol. 93.*

Intent.

In many Cases the Intent of the Party is void to all Intents, if it be not grounded according to the Law.

Remainders void, &c.

As, if a Man make a Lease to another for Term of Life, and after, of his meer Motion, he confirmeth his Estate for Term of Life to remain after his Death to another and his Heirs: In this Case, that Remainder is void in Law; for by the Law there can no Remainder depend upon any Estate, but that the same Estate beginneth at the same Time that the Remainder doth: And in this Case the Estate began before, and the Confirmation enlarged not his Estate, nor gave him any new Estate. But if a Lease be made to a Man for the Term of another Man's Life,

Life, and after the Lessor, only of his meer Motion, confirmeth the Land to the Lessee for Term of his own Life, the Remainder over in Fee; this is a good Remainder over in Fee. *Dr. & Stud. 20 C. f. 94.*

No Grant can be made, but to him that is Party to the Deed, except it be by Way of Remainder; And therefore, if a Man make a Lease for Term of Life, and afterwards the Lessor grant to a Stranger, that the Tenant for Term of Life shall have the Land to him and his Heirs; that Grant is void, if it be made only of his meer Motion without Recompence. *Dr. & St. lib. 2. C. 20. p. 94.*

Likewise if a Man make a Lease for Term of Life, and after grants the Reversion to one for Term of Life, the Remainder over in Fee, and the Tenant attorneth to him that hath the Estate for Term of Life only, intending that he only should have Advantage of the Grant: his Intent is void, and both shall take Advantage thereof, and the Attornment shall be taken good according to the Grant. *Ibid.* See after.

If a Tenant for the Term of another Man's Life dies, living the other

Occupancy. Man, he that doth first enter upon the Estate, after his Death, shall be Tenant for the other Man's Life, and shall be liable to the Payment of the Rent reserved. *Co. 1. par. Inst. fol. 41.*

In the Case of Occupancy (which aariseth by Conveyance) as,

Simile.

Where Lands are conveyed to *A.* for the Life of *B.* and *A.* dies without making any Estate or Assignment thereof, here whosoever first entreth after the Death of *A.* getteth Property in that Land during the Life of *B.* for the Land cannot revert to him that leased to *A.* till *B.* die; and to the Heir of *A.* it cannot go, for it is not any Estate of Inheritance, nor descendable to the Heir (without special Words), and as for the Executors of *A.* they cannot have it, for that it is not an Estate Testamentary.

How prevented.

But *Co. Lit. f. 41.* shews how this Occupancy may be prevented, by adding these Words in the Grant, *To have and to hold to A. and his Heirs, during the Life of B. for then 'tis descendable to the Heir.*

Aliter.

How also it may otherwise be prevented by assigning the Lease for Life over to Friends, and their Heirs, in Trust during the Life of *B.*

But

But the Statute 29 Car. 2. cap. 3. hath provided, That the Lessee or Grantee may devise such Estate for anothers Life, by his Will, in Presence of Three or more Witnesses.

And if he devise it not, and his Heir become Occupant, it shall be chargeable in his Hands as Assets by Descent, as in case of Lands by Fee-Simple. *How by Statute.*

And in case there be no Special Occupant, then it shall go to the Executors or Administrators of the Party that had the Grant, and shall be Assets. See the Statute.

And some have held, That an Executor *de son Tort* is as much within this Act to be charged as a Rightful Executor: And that the Entering into the Land and Leasing it, is enough to make him an Executor *de son Tort*. *Q. Et vide 5 Co. 33. &c.* *Executor de son Tort.*

If a Tenant hath a Lease for twenty Years of Lands and Tenements, and grant the same Lands for Part of his Term to a Stranger, reserving to himself Forty Shillings Rent; in this Case he may distrein for the Rent reserved, or have an Action of Debt at his Pleasure, because by common Intendment he is to have the same *Tenant grants Part of the Term.*

Land after the Years determined, because he hath granted but Parcel of the Years, so that the Remainder remains in him. *Perkins* 693.

If Rent be granted to a Man, he may grant it away to another before he be seised thereof. *Idem* 108.

*Husbands
Executors.*

If a Man and his Wife be ejected of a Term in the Right of his Wife, and the Husband bring an *Ejectione firme* in his own Name, and do recover, and die; in this Case, his Executors shall have it, and not the Wife, because the Recovery in his own Name did vest the Term in himself. *Co. 1. par Inst. fol. 46.*

Simile.

If a Man be possess'd of a Term of forty Years in Right of his Wife, and make a Lease for twenty Years, reserving Rent, and die; here the Executors of the Husband shall have the Rent for that Term, but the Wife shall have the Remainder of the Term when the twenty Years is out: But if he had granted the whole Term, she could have had nothing. *Cook. Ibid.*

Release.

A Release made to a Tenant for Term of Years before his Entry, is void; but a Release of the Rent before Entry, is good. *Id. 1 par. Inst. fol. 270.*

IF

If a Man makes a General Release of all Demands, it doth not release Rent due upon a Lease for Years.

2 Lev. 210.

The Tenant may grant away his Interest to another before Entry; ^{Grant before Entry.} and although the Lessor do die before Entry, yet the Tenant may enter into the Lands; and if the Lessee die before he enter, his Executors or Administrators may enter; and if a Lease be to two, and one of them die before Entry, the other may enter by Survivorship; and a Lessor cannot grant away a Reversion by the Name of a Reversion, before the Entry of the Tenant.

If a Man grant to a Tenant for ^{Estovers} Years, that he shall have so many ^{appurtenant.} *Estovers* as shall serve to repair his House, or that he shall burn within his House, or such like, during the Term; this is appurtenant to the Land, and shall run with the same, as a Thing appurtenant in whose Hands soever the same cometh.

Co 1 par. Inst. f. 41.

If Two Tenants in Common do ^{Tenants in Common.} grant a Rent of ten Shillings, this is several, and they shall be charged with twenty Shillings Rent: But if they make a Lease, and reserve

ten Shillings Rent, they shall have no more but only ten Shillings between them. *Id.* 1 *par.* *Inst.* f. 197.

Copartners. If Two Copartners make a Lease reserving Rent, they shall have this Rent in common as they have the Reversion: But if afterwards they grant the Reversion, excepting the Rent, then they shall be Joint-Tenants of the Rent.

Apportionment. If a Man leases Lands for Years reserving Rent, and a Stranger doth recover Part of the Land, then the Rent shall be apportioned, *viz.* divided, and the Tenant shall pay, having respect to that which is recovered, and to that which still doth remain in his Hands according to the Value, to each Party proportionably. *Dyer* 56, & 82. See after.

And for a full understanding of Apportionment of Rent; See *Danvers General Abridgment*, fo. 504, 505, &c. *Tit. Apportionment.*

Exception. If a Man make a Lease excepting a Close and Wood, the Law giveth him a Way to come to it.

Surrender in Law. If a Tenant for Years do take a new Lease for more Years, this is a Surrender in Law of the old Lease. *Watt. and Maidwel's Case.* *Hil.* 3 *Car.* R. 1302.

R. 1302. B. R. Perkins 117. Hutton.
Rep. 104.

A Lessee for Years cannot surren- *By a Lessee.*
der before his Term begin, neither
can he surrender Part of his Lease,
but he may grant Part of it. *Noys*
Max. 74. Vide ante.

If a Tenant for Life or Years
remove his Goods out of the House
and Land, by Reason of the Great-
ness of the Rent, or for any other
Cause, and the Lessor do enter in-
to the House and Lands; this is no
Surrender of the Lessee. *Idem p. 72.*

If a Tenant for Years assign over *Assignment.*
his Term and die, his Executors shall
not be charged for Rent due after his
Death.

And if the Executors and Admi-
nistrators of a Lessee for Years do
assign over their Right in the Lease,
there lieth no Action of Debt against
them for Rent after such an Assign-
ment by them made: But *vide contra*
ante, & 2 Vent. 209.

If a Tenant for Years assign his *Assignment.*
Lease to another, the Landlord may
charge which of them he will: But
if he once accept of the Rent from
the Assignee, knowing of the Assign-
ment, he cannot afterwards bring an
Action of Debt against the Lessee

for Rent due after the Assignment.
Hern. Law of Conv. p. 110.

Acceptance of Rent. By Acceptance of Rent by the Lessor from the Assignee, the Privity of the Contract is extinguished, and the Action of Debt against the First Lessee is gone. *1 Saund. 240, 241.*

But after such Acceptance, the Lessor or his Assignee may maintain an Action against the First Lessee, upon his Covenant for Payment of Rent. *Idem 240. Vide 2 Saund. 302.*

A Lessor may refuse to accept of an Assignee to be his Tenant at one Time, and yet may accept of him afterwards when he pleases. *2 Saund. 182.* And so may have his Election to sue the Lessee or his Assignee for the Rent; but after Acceptance from the Assignee, 'tis otherwise as above.

Reversion granted away.

If a Lessor grant away the Reversion, after the Assignment of the Lessee; in this Case the Grantee cannot have an Action of Debt against the Lessee for the Rent, because there is no Privity between them. *Popham 55.*

It is noted, that a Reversion of ^{B. Deed} a Term is not assignable without ^{only.} Deed and Attornment. 3 Lev. 155.

But by a late Act for Amend-^{Attorna-}ment of the Law, 4 & 5 ^{ment dis-}Anna, It ^{pened} is enacted, That all Grants or Con-^{with.}veyances thereafter to be made, by Fine or otherwise, of any Manors or Rents, or of the Reversion or Remainder of any Messuages or Lands, shall be good and effectual to all Intents and Purposes, without any Attornment of the Tenants of any such Mannors, or of the Land out of which such Rent shall be issuing; or of the particular Tenants, upon whose particular Estate any such Reversions or Remainders shall or may be expectant or depending, as if their Attornment had been had and made.

Provided nevertheless, that no ^{Upon Non-}such Tenant shall be prejudiced ^{sice.} or damaged by Payment, of any Rent to any such Grantor or Conusor, or by Breach of any Condition for Non-Payment of Rent, before Notice shall be given to him of such Grant by the Conusee or Grantee.

If

Use.

If a Lease for Years be made to a Man without any Consideration, the Lessee shall be seised to his own Use. *Perkins* 536.

Lessor's Intent avoided.

If a Man make a Lease of Lands to another, and to his Heirs for the Term of twenty Years, intending that if the Lessee die within the Term, that then his Heirs should enjoy the Lands during the Term : In this Case his Intent is void ; and if the Lessee die, his Executors, and not his Heirs, shall enjoy the Term ; for by the Law of the Land, all Chattels shall go to the Executor, and not to the Heir. *Dr. & St. l. i. c. 24.*

Appurtenances.

If a Man lets a House with the Appurtenances, no Land passes thereby ; but if it be with all Lands thereunto belonging, here the Lands used with the Houses do pass. *Hern. L. of Conv. p. 104.*

Lessor concluded.

If a Man take a Lease of his own Land by Indenture, he is then concluded to say, that the Lessor had nothing in the Land at the Time of the making of the said Lease ; but after the Lease is out, the Estoppel is removed. *Terms de ley Estoppel, Co. 1 par. Inst. fol. 47.*

If Two Persons be Joint-Tenants ^{Ejection} of a Lease for Years, and one bid ^{by Joint-Tenant.} the other go out of the House, and he goeth out; he that goeth so out may have an *Ejectione firmæ* against the other, as well as if he had Ejected him out by Force. *Beverlies Case, 24 Car. Claytons Rep. p. III.*

C H A P.

CHAP. III.

Of Payment of Rent, Acceptance, and Extinguishment thereof; Demands, Entries, Dates, Continuance, Limitations and Determinations of Leases.

Caution.

IT ought to be a principal Care of a Tenant, above all Things, to provide his Rent at the Time of Payment, whereby he may avoid much *Slavery* and *Knavery* of cruel biting Landlords.

Legal Day of Payment.

If a Tenant be to pay his Rent to his Landlord at our *Lady-Day* and *Michaelmas*, or within Fourteen or Fifteen Days after either of the said Feasts; in this Case he is not bound to pay his Rent until the last Day limited for Payment, for that is the legal Day of Payment, and the other before voluntary.

Fifteen Days after any of the said Days.

And if there be a Clause, That if the Rent be behind by the Space of Fifteen Days (more or less) after any of the said Days of Payment, then the Lease to be void: In this Case, if the
Time

Time limited be Fifteen Days, then the Tenant shall have Thirty Days after any of the said Feasts, to save his Lease: But if the Clause in the Lease be, That if the Rent be behind for the Space of Fifteen Days next after either of the said Feast Days of Payment, here the Tenant hath but Fifteen Days only allowed him: And so the Diversity is to be noted in this Case in the Words of a Lease, which with a very little and scarce observable Alteration makes so much Advantage for the Tenant. *Co. 10. lib. f. 227. Cook 1. par. Institutes, f. 202. Hern. Law of Conv. p. 23.*

If a Man take a Lease for Years to pay his Rent at our *Lady-day* and ^{Rent falls} to the Heir: *Michaelmas*, or within Fifteen Days after either of the said Feasts, and the Landlord die after either of the said Feasts, and before the Fifteen Days be out; the Heir in this Case shall have the Rent then, for the first Day is but voluntary, and the legal Day of Payment is at the end of the Fifteen Days: And if the Tenant before that Day pay the Rent, such Payment is voluntary, and not satisfactory; but if Payment be in the Morning, and the Landlord die at Noon, it is good to give Seisin: And though

though this Payment be voluntary, yet it is satisfactory against the Heir. *Hare and Savill's Case. M. 7 Jac. in Com. B. Brownl. Rep. 2 part. 273. Hern. p. 22, 23.*

Landlord
when to be
sought for.

If a Tenant for Years be to pay his Rent at *Michaelmas*, and to perform other Covenants; and if he be bound in any Obligation to pay his Rent precisely at the Day, he must in this Case seek out his Landlord to pay him; but if his Obligation be only to perform the Covenants in the Lease, he may then tender his Rent upon the Land, (if no other Place be by Agreement appointed for the Payment thereof) and it is sufficient; for the Payment is of the Nature of the Rent reserved. *Manly and Jennings Case. Pasch. 10 Jac. in C. B. Brownl. Rep. 2 par. p. 176. Noys Max. p. 80.*

Acquittance.

Note, a Man is not bound to pay an Annuity without an Acquittance; but a Rent-Service or Rent-Charge he is: And therefore in an Action of Debt brought against a Man for Rent due upon an Indenture of Demise of Lands, he may plead Payment without an Acquittance. *Perk. Sect. 780. Pract. Reg. 495.*

Also, if he that hath Rent-Service or Rent-Charge accepts the Rent due at the last Day, and gives an Acquittance for it, all the Arrearages of Rent due before are hereby discharged. *Co. Lit. 373. a. Herms Con. 40. 3 Co. 66.* *Discharge by Acquittance.*

Payment of Money before the Day appointed, is in Law Payment at the Day. *Pract. Reg. 495.*

See the late Act for Amendment of the Law, concerning Payment of Money into Court.

When one is to pay Rent at a certain Day, he hath all that Day 'till Night to pay it; but if it be a great Sum, he must then have it in Readiness so long before Sun-set, as they that are to receive it may see to tell it; for they are not bound to tell it by Candle-light. See after. *Payment before Sun-set.*

If a Parson let his Glebe-lands to a Lay-man, the Tenant shall pay the Parson Tythe of that Land besides the Rent: For the Tythes are of common Right. *Glebe-lands.*

If a Man let out by Lease a Stock of Cattle or other Goods, (as it is very usual now-a-days to lease out Silk-Stocking-Frames to the Weavers,) and the Rent be to be paid at several Days; if the Rent in this Case be

be in Arrear, the Lessor cannot bring an Action against the Tenant or Occupier thereof, until all the Days be expired: In like manner as it is in an Obligation with Condition for several Payments; because these are Personal Contracts. But it is otherwise in case of a Lease for Years, which is a real Contract, for there the Landlord may have an Action of Debt against the Tenant after every Day of Payment, if Default be made; or he may distrein at his Election. *Co. 1 part. Inst. f. 47. & 292.*

*Rent to
Joint-Tenants.*

If there be Two Joint-Tenants, and they make a Lease for Years by Parol or Deed Poll, and reserve Rent to one of them, this shall enure to them both: But if it be by Deed indented, it shall enure to him alone by Way of Conclusion. *Co. 1 part. Inst. f. 47. Co. 8. l. f. 70, 71.*

Dowry.

If an Heir let a Lease to a Tenant for Life, and reserves a Rent; against whom the Mother of the Heir recovers her Dower, and dieth; the Tenant shall have the Land again for his Life, and the Rent is revived. *Cook on Lit. f. 42.*

If

If the Successor of a Parson or Vicar accept the Rent of a Lease for Years made by his Predecessor ; yet this Acceptance is worth nothing, for the Lease is void by Death ; but of a Lease for Life, it is otherwise. *Pennant's Case. Cook l. 3. f. 65, 66.*

But if a Bishop accept the Rent upon a Lease for Years, he shall never avoid it ; for it was but voidable only, and his Acceptance hath now confirmed it.

If a Man hath Lands in the right of his Wife, and he and his Wife let these Lands for Years reserving a Rent, and afterwards the Husband dies, and she before any Day of Payment takes another Husband, who accepts the Rent and dies : By this Acceptance the Lease is affirmed. *Acceptance by Husband.*

In like manner, if a Man and his Wife let the Lands of his Wife for Years rendring Rent, and the Husband dies ; if the Wife accept the Rent, it is a good Lease. *Terms of the Law, Acceptance.*

But if a Tenant for Life lease Lands for Years and dies, the Lease is void ; and the Rent which is reserved upon the Lease is determined. And although he in Remainder do accept the

the Rent, yet his Acceptance will not make it good: For when it is once void by Death, no Acceptance after will make it good.

*Tenant in
Dower.*

So likewise if a Tenant in Dower lease for Years and die, the Lease is void, and Acceptance of the Rent by the Heir will not make it good again.

*Confirma-
tion.*

A Lease for Years may be confirmed for a Time, or upon Condition, or for a Piece of the Land: But if it be a Frank-Tenement, it shall enure to the whole absolutely. *Noys Max. p. 78.*

Affirmance

Observe this Difference between a Lease for Life, and a Lease for Years: In case of a Lease for Life, though the Conclusion of the Condition be, that it will be void, yet Acceptance of the Rent due after the Breach doth affirm it, and make it good again. *Pennant's Case. 38 Eliz. Co. 3. l.*

*Parson's
Lease.*

If a Parson let a Lease for Years of his Glebe-land, if it be confirmed by Patron and Ordinary, it shall bind the Successor, or else not. *Cook Inst. f. 300.*

Remainder.

If a Lease be made to a Man for the Term of another Man's Life, and afterwards the Lessor only of his

his meer Motion confirmeth the Land to his Lessee for Term of his own Life, the Remainder over in Fee: This is a good Remainder in the Law. *Dr. & St. 2. l. 20. chap. f.*

93.

If a Man lets Lands for Life or *Rent ex-* Years, reserving Rent, and do enter *tinguished,* into any Part thereof and take the *&c.*

Profit, the whole Rent is thereby extinguished, and shall be suspended during his holding thereof. *Leonard's Rep. 110. Goddard's Case, Mich. 34 Eliz. Com. Banc. Owne's Rep. fol. 10. Hern. l. Conv. p. 118.*

In what Case there shall be a Re- *Revised.* viver of Rent, and in what not. *Vide Lit. Rep. 58.*

In what Case there shall be a Sus- *Suspended.* pension of Rent. *Ibid.*

Where there shall be no Appor- *Apportion-* tionment of Rent. *Id. 61.* and how *ed.* the Word *Annuatim* or Yearly shall be taken.

Note, that where Two Closes are *Extinguish-* in the same Possession, the Duty of *ment.* Fensing is extinguished, and shall not revive, though the Closes come after into several Hands. *1 Vent. 97. Dyer 295. Poph. 172. 1 Cro. Baker and Bereman's Case.*

If

By Release,
&c.

If a Lessee assigns over his Term, reserving Rent, it will be extinguished by releasing all Demands. 1 Vent. 314. 1 Mod. 99.

But it was said, that a Rent incident to a Reversion would not be barred by such Release. 1 Vent. 314. 1 Sid. 141.

Also it's said, That a Man cannot release a Debt by his Will. 1 Vent. 39.

Note, That where a Fine is levied to a Lessee for Years, with an Intent that he should suffer a Recovery, his Term is not drowned. 1 Vent. 195.

But if Tenant for Life, with Power to make a Jointure, suffers a Recovery, the Power is extinguished. Id. 226.

Demand
and Tender
of Rent.

If the Tenant come to the Landlord at any Place upon the Ground at the Day of Payment, and tender his Rent to the Landlord, it is good enough, and shall save the Condition; and the Landlord is bound to receive it, altho' it were not at the most notorious Place, nor last Instant of the Day; for he may tender his Rent at any Time of the Day, although the last Instant be the legal Time of Payment. Co. 1 par. Inst. f. 202.

But

But observe by the Way, That a *Tender*.
 tender of Rent must be of the whole
 Rent, without Deduction of Taxes
 or Assessments, or any other Charges;
 for Stoppage is no Payment in the
 Law. *Tr. 23 Car. in B. R. Regist.*
Pract. p. 622.

If a Man lets Land by Lease for *Tend. r.*
 Years to another, reserving Rent of *when*.
 the Land to be paid at *Michaelmas*
 and our *Lady-day*, or within Fifteen
 Days after, and for Default of Pay-
 ment to re-enter; in this Case it is
 sufficient and lawful for the Tenant
 to tender his Rent the last Hour of
 the last Day, if the Money can be
 told in that Time before it be dark;
 and so it is sufficient for the Land-
 lord to demand it the same Hour.
Co. 1 par. Inst. 202.

Altho' the Time of Sun-setting is *Time to de-*
 the Time appointed by the Law to de- *mand Rent.*
 mand Rent, to take Advantage of a
 Condition of Re-entry, and of ten-
 dring Rent to save a Re-entry, and of
 tendring Rent to save a Forfeiture; yet
 it is due until Midnight: For if a Man
 demands till Sun-set, yet if after Sun-
 set, and before Midnight, he dies,
 his Heir shall have the Rent, and not
 the Executors. Which proves the
 Rent

Rent is not due until the last Minute of the Natural Day. *Vid.* 1 *Saund.* 287.

*Reservati-
on of Rent,
how.*

A Man seised in Fee ought to reserve the Rent upon a Lease to himself and his Heirs; for that it appears, if a Man seised in Fee makes a Lease for Years, reserving Rent to himself and his Assigns, this Rent is extinct after the Lessor's Death, because it was not reserved to the Lessor and his Heirs.

Lease by a Tenant in Fee, and Rent reserved to the Lessor, his Executors, Administrators and Assigns; the Words Executors and Administrators are void. 1 *Vent.* 162.

So if a Man seised in Fee lease one Acre of Land, reserving 10 s. Rent to him and his Heirs: And also lease another Acre reserving other 10 s. Rent to himself without saying [and to his Heirs], the Heir shall not have the last Rent, but it is extinct by the Death of the Lessor. 2 *Saund.* 268, 269.

*Rent trans-
ferred.*

But if one seised in Fee reserve a Rent upon a Lease for Years *durante Termino* to the Lessor, his Executors, Administrators and Assigns, and not to his Heirs; yet by a Grant of the Reversion from the Lessor, the

the Rent is well transferred to the Assignee, and in such Case the Rent being transferred to the Assignee, the Law transfers also to him the Covenant of the Lessee for the Payment of it as incident to the Rent. 2 Saund. 369.

Vide the Case of *Sacharveral versus Frogat*, 2 Lev. 13. where the Rent was reserved to him, his Executors and Assigns, the Heir brought an Action, and upon a Demurrer it was argued for the Defendant, That the Rent determined by the Death of the Lessor: But the Chief Justice said, That the Rent being reserved to him, his Executors and Assigns, would continue and go to the Heir, for the apparent Intent that it should endure after his Death, otherwise it could not go to his Executors, and that without the *durante Termino*. But that 'tis otherwise where the Rent is reserved to him, or to him or his Assigns; and after several Arguments, Judgment was given for the Plaintiff.

Now if a Man makes a Lease for Years reserving Rent generally, and does not say to whom, the Law will make Construction, that it shall be paid during the Time, to them who

According to apparent Intent.

When not said to whom.

have the Reversion, and to whom from Time to Time it shall appertain. 2 *Saund.* 369.

*Heir not
named.*

Where a Father is seised in Fee, if he and his Son, and Heir Apparent, by Indenture make a Lease for Years, to commence upon the Death of the Father, rendring Rent to the Son by Name, altho' the Son be Heir to his Father, he cannot have this Rent as Heir, because the Rent was not reserved to the Heir, and he cannot have it by the Reservation of the Lease, because he was a Stranger to the Land, and had nothing in it at the Time of the Lease made. 2 *Saund.* 370.

*Reservati-
on how con-
strued.*

If a Lessor seised of a Reversion in Fee, demise the Reversion expectant upon an Estate for Years to a Stranger for Life, reserving Rent when the Reversion shall happen: In such Case he shall have no Rent during the Continuance of the Term for Years; for a Reservation of Rent shall be construed most strongly against the Lessor himself. 2 *Saund.* 166. 368.

*Re-entry
Landlord.*

If a Lease be made with this Proviso, That in case of Non-payment, the Landlord to re-enter: Here if the Landlord distrein, he may not re-enter,

re-enter, but he may accept of the Rent and yet re-enter ; but if he do receive the next Rent again, then he cannot re-enter, for that establissheth the Lease. Entry into an Acre of Land in the Name of the whole, is a good Entry, if the Land do all lie in one County. *1 par. Inst. p. 211.*

In a Lease for Years, if the Lessee *Re-entry.* covenant, that if he or his Executors or Assigns do alien, that then the Lessor shall re-enter, and afterwards he makes his Wife Executrix and dies ; and the Widow marries again, and her second Husband aliens : In this Case the Lessor may re-enter ; because the second Husband is Assignee in the Law.

If a Man make a Lease for Term of *By Heir.* Years, yielding to him and to his Heirs a certain Rent, upon Condition, that if the Rent be behind and unpaid by the Space of Forty Days after any of the Days of Payment, that then it shall be lawful to the Lessor and his Heirs to re-enter : And after the Rent is behind Forty Days, and is demanded by the Lessor, and is not paid, the Lessor dieth, and his Heirs enter ; in this Case his Entry is lawful : But if the Lessor had died after the Feast-day, and before

G 2 the

the Fortieth Day, so that he had not demanded the Rent, and his Heir had demanded the Rent at the Fortieth Day, and for Non-payment he re-enters: In this Case his Re-entry is not lawful. *Dr. & St. l. 1. c. 20. f. 35.*

*Limitation
to Wife.*

If a Lease be made to *H.* for One and Forty Years if he live so long, and if he die within the aforesaid Term, that then the Wife of the aforesaid *H.* shall have it for the residue of the said Years: This Limitation is void; for if *H.* die, the Term ends, and his Wife shall have nothing in it. *Dyer 254.*

*More Acres
pass.*

If a Man lets all his Meadow in *D.* containing Ten Acres; if there be Twenty Acres of it, all passes in this Case. *Dyer f. 80.*

*Feoffment
by Lessee.*

If Lessee for Years make a Feoffment, the Lessor being upon the Land when Livery was made; this is a good Feoffment, the Law adjudging the Lessee in Possession, and Livery ought always to be given of the Possession, and therefore he that hath the Possession must make the Livery. But if the Lessor makes the Livery himself, the Lessee being upon the Land, this Livery is void, because the Lessor cannot give Possession when

Livery.

when the Lessee is there. *Cro. Eliz.*

321, 322.

It's said, one may give Authority *Livery and Seisin.* by Parol (or Word of Mouth) unto another to take Livery and Seisin of Lands for him, and that if such Livery and Seisin be taken accordingly, 'tis good. *Pract. Reg.* 398.

If a Deed of Feoffment be made of Land, *habendum a Die Datus*, and the next Day after the Date of the Deed, the Feoffee give Livery and Seisin of this Land, this is a good Livery and Seisin; but that if this Livery and Seisin were made by Attorney, it is said it will operate nothing. *Vide Hob.* 314. *Pract. Reg.* 398.

A Thing that is to take effect *a Die Datus*, is not to take Effect until *Dat. &c* the next Day after the Deed bears Date; but where it is *Habendum a Dat'* or *a Confectione Indenturae*, there it commenceth presently. *Pract. Reg.* 398. See after.

A. makes a Lease to B. for Life, *Habendum a Die confectionis*, and Livery is made by A. himself a Month after, it was held that the Livery was good, it being made by the Feoffor himself. But if it had been by Letter of Attorney, such future Li-

very would operate nothing. *Cro. Jac.* 458.

*Livery
void.*

If a Man make a Lease for Years, and afterwards make a Deed of Feoffment, and delivers Seisin; if the Lessee be upon part of the Premises, and neither know nor assent to it, yet the Livery is void: For though the Lessor hath the Freehold and Inheritance in him, yet the Possession is in the Lessee; but if the Lessee be absent, and hath neither Wife, Children, nor Servants (tho' he hath Cattle) upon the Ground, the Livery shall be good. *1 part. Inst. f.* 48.

*Commence-
ment of
Leases.*

If a Lease be made to hold from the Day of the Making, or from the Day of the Date, or from the Date, the Lease shall begin the Day after it is delivered.

A Lease beginning from henceforth, shall be accounted from the Day of the Delivery, and from the Making shall be taken inclusive from the Day of the Making: The Day of the Delivery must be taken inclusive, and is the first Day of the Term. If from the Day of the Date, or Day of the Making, then the Day of the Delivery shall be exclusive; *aliter* if from the Date, and it is delivered the same

the same Day. 14 Eliz. Dyer 307.

If the *Habendum* of a Lease be for *Habendum* a Term of One and Twenty Years, without mentioning when it shall begin, it shall then begin from the Delivery. So if an Indenture of Lease bear Date upon Days impossible, as *Feb. 30. or March 40.* there being no such Days in our Account; in this Case if the Term be limited to begin from the Date, it shall take Effect and Beginning from the Delivery, as if there had been no Date at all. Co. 1 part. Inst. f. 6. Co. Lit. 46. Hern. L. Con. 15. 131.

Vide 1 Vent. Rep. 137. That a Lease without any Date specified, or an impossible Date, as from 40 Sept. shall commence presently.

So a Lease made to begin from the end of the Lease misrecited, shall commence presently. 1 Vent. 83. 1 Lev. Rep. 234.

Prebendary made a Lease for Life to hold from the Date, and Livery made the same Day; it was objected, that it ought to commence from the Day of the Date, and so Livery given the same Day was void: But the Court at length held it good,

and gave Judgment for the Defendant.

*Upon
Failure of
Issue.*

A Lease is made to commence after the Death of *J. S.* his Son without Issue, *J. S.* hath Issue and dies, and then the Issue dies without Issue, the Lease commences; for Issue being a Word collective, whenever the Issue fails the Term commences.

*One Lease
to Day, a-
nother next
Day.*

If Lands descend to an Heir, he may make a Lease thereof before his entry into the same. If a Man makes a Lease to Day to one for Ten Years, and to Morrow makes another Lease of the same Lands to another Person for Twenty Years; this second Lease shall be good after the first is expired, for so many Years as remaineth therein to come. *Noy's Max. p. 67.*

*Upon Sur-
render, &c.*

If a Man make a Lease to another for One and Twenty Years, and after another Lease to commence from the End and Expiration of the said Term of Years, and after the first Lease is surrendred; in this Case the second Lease shall commence presently upon the Surrender. *Co. 1 par. Inst. f. 45.*

But

But if it had been made to commence from the End of the said One and Twenty Years, there, tho' there had been a Surrender, yet it should not have commenced 'till the Term had been out; so that by this you may observe, the Law puts a Distinction between a Term of Years, and Time of Years.

And by 3 *Lev.* 284. an Estate vests *Difference.* immediately after a Surrender made, before Acceptance or Agreement; but that it divests by Refusal afterwards.

And so by 2 *Vent.* 199. noted, that it was said, That no Surrender of an Estate can perfect without acceptance by the Surrendree. *Thompson versus Leach.*

But that Judgment was afterwards *Present* reversed in Parliament; so that it appears that a Surrender divesteth the *Divestment.* Estate immediately before express Assent of the Surrendree. *Id.* 203.

A Lease made to commence after *Present* the end of another, and there is none, *Commencement.* it shall commence presently.

If a Man lets Lands to another to *Incertainty.* hold, 'till the Lessee hath levied twenty Pounds; this is a good Lease, notwithstanding the Incertainty.

Commence-
ment and
Determi-
nation.

Bracton saith, That every Lease must have a certain Beginning and ending; *Quia id certum est, quod certum reddi potest.* Yet you see by the Case before, this Rule is contradicted, so that it holds not always, although in the generality it doth.

Upon Nomi-
nation.

For if a Man make a Lease to another for so many Years as *I. S.* shall name; although this be uncertain at the beginning, yet when *I. S.* hath named the Years, it is then good for so many Years as he names.

Upon Pay-
ment.

So likewise, if *A.* be seised of Lands in Fee, and do grant to *B.* that when he pays him Twenty Shillings, that then from that Time he shall have and occupy the Land for One and Twenty Years; and after *B.* pays unto *A.* the Twenty Shillings; this is a good Lease for One and Twenty Years from that Time. *Co. l. f. 34, 35. Co. 1 par. Inst. f. 45.*

Of Glebe.

If a Person make a Lease of his Glebe for so many Years as he shall be Parson there, this is void, because of the Uncertainty thereof; for the Parson's Time there terminated with his Life, than which nothing is more uncertain.

If a Lease be made for One Hundred Years, if *A.* and *B.* live so long; in this Case if either of them die, the Lease is ended. *Deaths.*

If an Infant who is seised of Lands in Soccage, make a Lease at his Age of Fifteen Years; this is good, and shall bind him. *Co. 1 par. Inst. fol. 45.* *Infant.*

If a Tenant in Fee marry a Wife, and make a Lease of his Lands for Years, and after die, and the Wife is thereof endowed; here she shall avoid the Lease, but after her Death it shall be in force again against the Heir. *Co. 1 par. Inst. fol. 46.* *Avoided by Wife.*

If a Man have a Term of Years in the Right of his Wife; if she die, it remains to him; but if she survive him, it remains to her, and not to his Executors, without he dispose of it in his Life-time. *Co. l. 8. f. 49.*

If a Man license another to enter and occupy his Lands, this is a good Lease for Years in Law. *Brownl. 2 part. p. 250.* *Litence.*

A Lease for Years, although it be never so long, cannot be entailed, because it is a Chattel which cannot be turned into an Inheritance. *Styles Regist. Pract. p. 197.* *Long Lease.*

For Life.

If a Man feised in Fee-Simple let a Lease to another, to have and to hold the same Lands for Term of Life, and do not mention whose Life, it shall be taken for the Lessee's Life ; because the Act of every one shall be taken most strongly against himself.

But if a Tenant in Tail let such a Lease without expressing whose Life, it shall be taken for the Life of the Lessor.

By Joint-Tenant.

If a Joint-Tenant make a Lease for Years of his Part, though the Lessee never had Possession, or tho' it be to begin at a Day to come, and the Joint-Tenant that made it die before the Day, yet the Survivor shall be bound by the Lease, for the Lessee hath a present Interest. *Co. 1 par. Inst. f. 185.*

Partition.

If Two take a Lease for their Lives, and make Partition, either of them dying, his Part immediately reverts to the Lessor.

Joint-Tenants.

If there be Two Joint-Tenants for Life, and one of them makes a Lease for Eighty Years, to begin after his Death, and after dies, this Lease is good against the Survivor. *Goldf. Rep. 187.*

If a Lease be made to the Husband and the Wife, yielding a greater Rent than the Land is worth; if the Husband die, the Wife, after the Husband's Death may refuse the Lease, to save her from the Payment of the Rent: But if the Husband over-live the Wife, and then make his Executors, and dies; if they have Assets, that is, if they have Goods sufficient of their Testator to pay the Rent, they cannot refuse it: But if they have no Goods sufficient of their Testator to pay the Rent to the end of the Term, if they relinquish the Occupation, they may by special Pleading discharge themselves of the Rent and the Lease. *Dr. & St. l. 2. c. 33.*

How a great Rent may be avoided.

If a Man makes a Lease for Years, and afterwards the Lessor enters upon the Land let before the Term is expired or determined, and doth make a Lease of these Lands to another; this second Lease, it's said, is a good Lease until the first Lessee doth re-enter, and then the first Lease is revived, and the first Lessee is again in Possession by virtue of the first Lease. *Pract. Reg. 403.*

Lease revived.

Where

*Present
Possession.*

Where a Lease for Years is made by the Words, Demise, Grant, and to Farm Let, the Lessee is not in Possession so as to bring Trespass, &c. until an actual Entry. But where the Words, Bargain and Sale, (for a Consideration of Money) are in, although but for a Shilling, the Party is in Possession presently upon executing the Deed so as to bring Trespass, &c. *Ibid.*

*Mines, &c.
reserved.*

If I let Lands in which are Mines, or Trees, I cannot enter to take the Trees, or Mines, but am a Trespasser, unless I do reserve such a Privilege to my self when I let the Lands.

But if a Lessor do come upon the Grounds leased, he is no Trespasser, for it shall be intended that he came to see if Waste were done.

Mines.

It is noted, that if a Man opens a Mine in his own Land, he may dig and follow the Vein under another Man's Ground; but if the Owner dig there also, he may stop his further Progress. 2 Vent. 342.

Concerning Leases and Grants made of the Dutchy of Cornwall, *Vide Stat' 6 An. cap. 25.*

If a Tenant for Years happen by *Lease lost.* any Casualty to lose his Lease, yet he shall not lose his Term in the Lands let by such Lease which is lost, if it can be proved that there was such a Term let to him by Indenture, and that it is not determined.

Where by an Order confirmed by *Cancelling Indenture.* Act of Parliament, That an Indenture shall be vacated and cancell'd, 'tis not intended that the Indenture shall be void *ipso facto*, but that it shall be made void by cancelling of it, and until the cancelling the Estate granted by the Indenture continues. 1 *Saund.* 201.

An insensible Clause does not make the residue of a Deed vitious, which is sensible of it self. 1 *Saund.* Rep. 320.

All Feoffments, Gifts, Grants, and Leases made by *Durefs.* Durefs of Imprisonment are voidable, and that not only by the Parties themselves, but by their Heirs and those who have their Estates. *Perk. Sect. 16. Co. on Lit. f. 253. b.*

If a Lay-Man who is unlearned, *Reading the Deed.* and cannot read, be bound to seal a Lease, Bond, or other Writing to another; in this Case he need not do it, without there be some there to read

read them to him, if he request it and in such Language as he understands: And if it be read amiss to him, or declared contrary to what it is, so as the illiterate Man is thereby deceived; as a Bond of Twenty Pounds is read as of Twenty Shillings; or a Feoffment of Two Acres is read as of One; in such Case he may very well plead, that it is not his Deed; but if he request not to have the Writing read, though it be contrary to his Intent and Meaning yet it shall bind him if he seal and deliver it, for it was his Folly that did not desire to have it read. *Co. 2 Rep. f. 3. &c.*

C H A P. IV.

Of Corn sown, who shall have the Crop. Of Estovers, and Trees blown down; of Distresses: What Things may be distreined, and how used: Who may take a Distress; for what Cause, when, and where.

IT is an usual Saying, and generally received Opinion, That he that Sows must Reap: But as there is no general Rule without some Exception; so this holds not always, that he that Sows shall Reap.

But touching the Sowing of Corn; *Sowing and Reaping.* if the Tenant be outed, or his Term ends before it be ripe, who shall have the Corn I have already set down in the First Chapter, under the Title of *Tenant at Will*: For if a Tenant at Will sow his Land, and the Landlord put him out before the Corn be ripe, he shall have Liberty to Reap and carry away his Corn, because he knew not when his Landlord would put him out. *By Tenant.*

But

By Land-
lord.

But it is contrary with a Tenant who hath a Lease for Years : For if his Lease be out before the Corn be ripe, his Landlord shall have it, because he knew the End of his Lease : Wherefore if he sowed, it is in his own Wrong, unless there be a Covenant in his Lease between the Lessor and him, that he shall have his Way-going Crop. *Vide antea.*

Hemp or
Flax, &c.

But if a Tenant at Will, set Roots, or sow Hemp or Flax, or any Thing that brings in any Yearly Profit ; if after the Planting, the Lessor out him, or if the Lessor die, yet the Tenant or his Executors shall have the Crop. But it is otherwise if he plant young Fruit-Trees, or other Young Trees, as Oaks, Ashes, or Elms ; or sow the Ground with Acorns ; in this Case if the Lessor out him, he shall have none of these, because these yield no Yearly Profit at present.

Where an Action lies against such as hinder taking away his Emblements, as Corn growing, Grass, Fruit of Trees, Hemp, Flax, &c. *Co. Lit. 56. Kelw. 125, 160.*

Executors.

If a Tenant for Life soweth the Ground, and die before the Crop be ripe, his Executors shall have it ;
and

and so they shall have Grass if it be cut ; but if it be *unmown*, they shall not have it, for that is Part of the Inheritance till it be severed.

Every Tenant that hath an Estate *What Tenant.* uncertain, shall have the Corn sown by him, though he be outed before it be ripe.

If the Lessee sow the Land, and then *Where Lessor shall have the Corn.* surrender his Term, the Lessor, or he to whom the Surrender is made, shall have the Corn ; so if a Man enter for Condition broken, he shall have the Corn, and not he that soweth the Corn, for his Entry over-reacheth the Estate of the other. *Goldb. Rep. 189.*

If a Lessee for Years sow the Land, *Simile.* and then commits Waste, and the Lessor recovers the Land in an Action of Waste ; here the Lessor shall have the Corn sowed. *Perk. Sect. 15. Cowells Inst. 152.*

If Tenant for Life lease for Years, *Where Lessee shall.* and the Lessee sows the Ground, and before it be ripe the Tenant for Life dies ; yet notwithstanding the Lessee for Years shall have the Corn, or his Executors if he be dead. *Co. Lit. 55. b.*

Tenant for Life, Remainder in Fee, Tenant for Life leaseth for Years ; the Lessee is ousted by a Stranger,

Stranger, and the Stranger sows the Land, and the Tenant for Life dies: In this Case it was resolved, that the Corn of right belonged to the Lessee of Tenant for Life, and not to the Stranger, nor him in Remainder. *Goldf. Rep. 143. pl. 60. 5 Co. 85.*

*He that
manured.*

If *A.* lease Land for the Life of *B.* and sow the Land, and before the Corn be ripe *B.* dies, yet notwithstanding *A.* shall have the Corn, for his Estate was determined by the Act of God; and the Reason why a Man which hath an uncertain Estate shall have the Corn, is, for that he hath manured the Land; and therefore it is Reason, that he that laboureth should reap the Fruits of his Labour: Therefore if a Man make a Lease for Life of Ground sowed, and before Severance the Lessee dies; in this Case the Lessor shall have the Corn, and not the Executor of the Lessee for Life, for the Corn came not of the Manurance of their Testator. And if Lessee for Life sow the Land, and then assign over his Interest, and dies before the Corn be severed here he in Reversion shall have the Corn, and not the Assignee of the Lessee for Life. *Goldf. Rep. 144.*

Simile.

Reversioner.

If a Man by his Will devise Lands *Remain-*
sowed to one for Life, and after his *der Man.*
Decease the Remainder to another
for Life, and the first Tenant enters
and dies before Severance, and he
in Remainder enters ; now he shall
have the Corn, and not the Execu-
tors of the first Tenant for Life:
Goldf. Rep. 144.

If a Man be seized of Land in *Wife.*
Right of his Wife, and sow the
Land, and die, his Executors shall
have the Corn ; but if they be
Joint-Tenants of Lands, and the
Husband soweth the Ground and
dieth, the Wife shall then have it.
Co. on Litt. f. 55. b. Perkins Sect. 518.
Dyer 316.

And if a Woman who is a Tenant
for Life or in Dower take an Hus-
band, and he sow the Land, and
before it be ripe she dies, yet the
Husband shall have the Corn. *Cowells*
Inst. 141. Swinb. Sect. 6. p. 163.

And so if the Husband let the *Lessee's Be-*
Lands of his Wife for Years, and the *nefit.*
Lessee sows the Lands, and before
Severance the Wife dies, yet the
Lessee shall have the Corn, or his
Executors if he be dead. The like
Law of Lessee for Years, of Tenant
by the Courtesie, when Tenant of
the

the Courtesie dies before his Lessee's Corn is ripe and severed. *Cowels Inst. p. 141.*

Lessor's Benefit.

If a Woman who holds Lands *Durante viduitate sua* sow the Ground, and then takes Husband before the Corn be severed; in this Case the Lessor shall have the Corn. And so it Tenant at Will sow the Land, and then will occupy the Land no longer, he shall then lose the Corn; and the Reason hereof is, because the Determination of their Estates grew by their own act. *Co. on Lit. 55. b. 5 Co. Rep. 116.*

Lessee's Benefit.

But if such a Woman who holds Land *Durante viduitate sua* lease the same Lands to another, and the Lessee sows the Land, and then the Woman takes Husband, which determines her Estate, yet notwithstanding the Lessee shall have the Corn. So if Tenant for Life lease for Years, and the Lessee sows the Lands, then Tenant for Life commits a Forfeiture, so that his Lessor enters, yet the Lessee of Tenant for Life shall have the Corn; but if Tenant for Life sows the Lands, and then commits a Forfeiture, and the Lessor enters, here he shall have the Corn, and not Tenant for Life, because the Determination of his Estate

Contra.

Estate grew by his own act. *Goldf. Rep. 189.*

A Lease made by the Husband of the Wife's Land in his own Name only, is void after his Death ; but if the Lessee have sown the Land, he shall have the Corn. *Noys Max. 70.*

If there be a Landlord and Tenant, and the Land is recovered by a Title Paramount against the Landlord ; in this Case, if the Tenant have sowed the Land, he that recovered shall have the Corn, if it be not severed before Judgment ; but if a Common Recovery be had against the Landlord in a Writ of Entry *en le post*, or in any other Writ by a false and feigned Title, in such Case the Lessee shall have the Corn. *Co. on Litt. 142. Perkins Sect. 515.*

Recovered
by Title
Para-
mount.

If an Abator, after the Death of the Ancestor, enter and sow the Land, and after the right Heir doth enter ; in this Case the Heir shall have the Corn. So if a Disseisor sow the Land, and then the Disseisee entreth upon him, or recovereth in an Assize before the Corn be severed ; in this Case the Disseisee shall have the Corn ; but if it were severed before the Entry or

Where the
Heir.

Reco-

Where Dis- Recovery, though it remain still up-
seisor. on the Land in Sheaves or Cocks,
 there the Disseisor shall have it. But
 it is otherwise in the Case of Trees
 severed from the Land ; for if they
 be not carried off the Land before
 the Disseisors Entry, he shall then
 have them. *Goldf. Rep. 144. Perk.*
Sect. 519.

Widow.

If a Widow have Land assigned to
 her by the Sheriff for her Dower,
 and this Land is sowed with Corn ;
 here she shall have the Corn. *Vide*
Perk. Sect. 521. 15 Eliz. Dyer 319.

Her Execu-
tors.

Note, That the Statute of *Merton*,
 ch. 2. which giveth, *Quod omnes vi-*
duæ de cætero possint ligare blada, &c.
 as unto this Point, is but in Affir-
 mance of the Common Law ; for if
 Tenant in Dower soweth the Land
 which she holdeth in Dower, and
 dieth before Severance, her Execu-
 tors shall have the Corn if she do
 not devise it to another ; and so was
 the Law taken in the 4th of *H. 3.*
Devise 6. which was sixteen Years
 before the making of the Statute
 of *Merton. Perk. Sect. 522. C. 2. part.*
Inst. 83.

Executors.

If Tenant in Tail sow the Land,
 and give me Corn, and dye before
 I have severed it from the Land,

yet I may afterwards sever the same and take it ; for that the Executors of the Tenant in Tail should have had it. *Perk. Sect. 59.*

But if Tenant in Tail give or sell to me a Tree growing upon the Land, and dies before I have the Tree, and his Issue entrench into the Land where the Tree is growing, now I cannot cut the Tree but he may have Trespass against me : But it seems, if it were cut in his Lifetime, I may then take it away after his Death. But *Quar.* of this ; for some are now of a contrary Opinion. *Kitch. 226. a. b. 27 H. 8. fo. 6. P. 18 E. 4. fo. 6. a. and Hill. 18 E. 4. fo. 21. b. in the End. Perk. Sect. 58.*

*Trees cut by
Tenant in
Tail.*

If Tenant in Fee-Simple give or sell me a Tree growing upon his Land, and die before I have cut it, yet I may have it after his Death if I please. *Perk. Sect. 58.*

Trees.

There is Three Kinds of *Estovers* in the Law, which is incident to the Estate of every Tenant, whether it be for Life or Years.

Estovers.

1. *House-boot*, of which there are Two Kinds ; the one to repair the Houses, the other to burn, which is called *Fire-boot*.

H

2. Then

2. Then there is *Estovers*, called *Plough-boot*; that is, Stuff to mend the Tenants Ploughs, Carts, Harrows, Wayns, and making Rakes and Forks for getting in his Hay and Corn.

3. There is another kind of *Estovers* called *Hedge-boot* or *Hay-boot*; this is Timber and Wood for making Gates and Styles, and Boughs and Bushes for mending and repairing Hedges and Fences.

1. So there is *Estoverium ædificandi & arandi*, House-boot.

2. *Estoverium arandi*, or Plough-boot.

3. *Estoverium Claudendi*, Hedge-boot or Hay-boot.

Definition of Estovers. *Estover* or *Boot* signifies an Allowance, Compensation or Satisfaction; and any of all these Boots aforementioned, a Tenant may take without Assignment of the Landlord, unless he be by the Landlord restrained by Special Covenant in his Lease, which is very usual amongst many

many Landlords, especially if the Farm be any Thing considerable, then they commonly limit the Tenant how much *House-boot* or *Plough-boot*, or *Hedge-boot* he may take without Assignment, and how much by Assignment. *Vide 2 Co. Inst. fo. 18. Term del la Ley, &c.*

If a Tenant for Life or Years cut down Trees, or pull down Houses, or suffer them to fall down, the Lessee for shall have the Trees and Timber of the said Houses; for the Lessee had them only as Things annexed to the Land, and this Severance will not give him a greater Estate in them, but his Interest is then determined. *Co. l. 4. 31, 62. &c.*

The Landlord shall likewise have Windfalls; that is, Timber-Trees blown down by Wind and Tempest, because they are Parcel of his Inheritance, so that the Tenant for Life nor Years cannot have them, unless it be to build withal; where Houses are in Decay; but if they be Dotards or Pollards without Timber, which bear neither Leaves nor Fruit in Summer, the Tenant shall have such when they are blown down. *Dyer 332.*

Estovers.

Estovers granted to be burnt in such a House, shall go to him that hath the House by whatsoever Title; for one is inseparably incident to the other. *Finch l. 1. c. 3. p. 15. 1 Perk. Sect. 104. Kitchen § 1. a.*

What Property.

Lessee for Life or Years, Tenant in Dower, or by the Courtesie, or Tenant in Tail after the Possibility, &c. have only a special Interest or Property in the Trees, as Things annexed to the Lands, so long as they are annexed thereunto; but if they or any other sever the Trees from the Land, then their Interest is determined, and the Lessor may take the Trees as Things that are Parcel of his Inheritance, the Interest of the Lessee being determined. *4 Co. Rep. f. 62. Noys Max. 65.*

Trees cut by Stranger.

If a Stranger cut down a Tree, growing upon the Land of the Lessee for Years, and carry it or the Bark thereof away; the Lessor at his Election may either have an Action of Trover against the Stranger, or an Action of Waste against the Lessee; for the Property of the Timber, is always in the Lessor *non obstante*, the Statute of Gloucester which gives him his Action of Waste, and so was the Opinions of
Jones,

Jones, Whitlock and Richardson. Hill.
7 Car. 1. in B. R. Berry and Reeds
Case, Cro. Rep. 1 par.

If one have Estovers in certain in
ten Acres of Wood, and five of them
descend to him, he shall have the
whole out of the Residue. *Critica*
Juris Ingeniosa, p. 123.

If a Man grant to another Estovers in certain in such a Wood, and afterwards the Grantor makes such Waste in the Wood, as that there is not sufficient Store left, out of which the Grantee may take his Estovers; in this Case he may have a *Quo Minus* against the Grantor, which is in Nature of a Prohibition, forbidding him to make such Waste. See after concerning Waste. *Estovers wasted.*

*Concerning Distresses, Replevin, and
Avowry, &c.*

Distress is a Law of Custom; *Distress by Custom.*
that is, if Rent be in Arrear and unpaid, the Landlord may take a lawful Distress; and that he shall put in Pound Overt, there to remain until he be satisfied of what he distreined for.

*Pound
Overt.*

So that if a Landlord distrein the Cattle for Rent, and put them in a Pound Overt, and the Beasts die there for lack of Meat, it is at the Peril of him that ow'd the Beasts, and not of him that distreined: For in him that distreined, there can be assigned no Default, but the Default was in the other, because the Rent was unpaid. *Dr. & St. l. 1. C. 5. p. 10.*

Of what.

Now a Distress must be made of such a Thing, wherein some Body hath a certain and valuable Property; therefore such Things as are *Fera naturæ*, cannot be distreined; neither can any one distrein a Horse if any Body be on the Back of him; nor any Thing which a Man holds in his Hand, or carrieth about him, annexed to his Body.

*General
Rule.*

And although the Law be, that Landlord may distrein any Thing that he finds *Levant* or *Couchant* upon the Premisses for his Rent behind, whose Goods or Chattels soever it be, and may detain the same until his Rent be satisfied; yet this general Rule hath some Restriction and Limitation, for there are several Things whereof a Distress cannot be taken.

Such

Such Things as are for the Maintenance and Benefit of Trades, cannot be distreined for Rent; as an Horse in a Smith's Shop, nor an Horse in an Inn cannot be distreined for the Rent thereof; nor the Materials in a *Weaver's Shop*, nor the Making of Cloth, nor Cloth or Garments in a *Taylor's Shop*, nor Sacks of Corn, nor Meal in a Mill for the Rent thereof; nor any Thing that the Tenant hath distreined for *Damage feasant*, for that is in the Custody of the Law, *Noys Max. 124. Terms of the Law. tit. Distress.*

Likewise Oxen of the Plough may not be distreined, nor a Millstone, though it be raised to be picked, so long as it lies upon the other Stone. *Cook on Lit. f. 47.*

Neither may a Distress be taken of Sheep, if there be a sufficient Distress besides.

Neither can a Man sever Horses joined together, or to a Cart. *1 Vent. 36.* but he ought to have distreined Cart and all, according to 20 E. 4. 3.

Likewise Victuals, nor Sheafs or Shocks of Corn cannot be distreined: But Carts or Waggon's loaded with Corn may be distreined, either

for Rent, or *Damage feasant*: *Cook. ib.*
But see afterwards the late Act made
for Distresses.

*Cart and
Horse.*

A Distress of a Cart loaden with
Corn and four Horses to it, was
adjudged not to be Excessive, be-
cause he could not sever the Horses.
Vide 3 Cro. 7. 2 Vent. 183.

*Tools
fixed.*

No Man's Tools wherewith he
works at his Trade shall be distrein-
ed, as the Carpenter's Axe, or a
Scholar's Books, &c. *Cook ibid.*

*Things
fixed.*

Neither can any Thing which is
fixed to the Freehold be distreined,
as Furnaces, Coppers, or Fats fixed
for Dyers or Brewers, (although the
Tenant may remove them during
the Term) nor the Windows or Doors
of a House while they are upon
the Hinges. But if they be removed
off from the Hinges, they may be
distreined.

Tables.

The Landlord cannot distrein Ta-
bles dormant in the House of his Te-
nant, or any Thing which cannot
be attached in an Affize; neither
can any Thing be distreined, of
which the Sheriff cannot make a *Re-
plevin*, or that cannot be restored a-
gain in as good a Condition as it was
when it was distreined.

But

But a Man may distrein the Beasts ^{Strangers} of a Stranger (that come by Ef- ^{Beast.} cape) for Rent, though they have not been *Levant* and *Couchant* upon the Ground, according to *Cook*, 1 par. *Inst. f. 47.*

The Lord of a *Leet* may sell a Di- ^{Lord of a} stress taken for an Amerciament in ^{Leet.} his *Leet*, as the King may sell a Distress, because it is the King's Court.

But it is noted, That a Court *Leet* can amerce for nothing but only publick Nufances, and not for particular Trespafs or Damage to the Lord, or any other. *Vidi. 1 Saund. 135.*

And see 1 *Vent. 105. Raymond 204.* That although by common Right, a Distress may be taken for a Fine in the Court *Leet*; that is, where it is imposed for such Things as are of common Right incident to its Jurisdiction, as for Contempts and the like; yet where Custom only enables them to fet a Fine, it cannot be distreined for, without a Custom so to do.

That for Amerciaments in a *Leet*, ^{For Amer-} the Lord may distrein, although it be ^{ciaments} in the Highway; but for Amerciaments in a Court *Baron* he may not, neither for an Amerciament in a *Leet*, in a Place seized into the King's
H. 5. Hands

Hands for the King's Debt. *Vide Doct. & Stud. Lib. 2. cap. 9.*

Goods.

If a Man distrein Goods or Chattels, he may put them where he will, either in a Pound *Covert* or *Overt*; But if they take any Harm, he must answer for them. *Dr. & St. 2. C. 27.* But see after.

Cattle.

If they be living Cattle, they ought to be put in a common Pound, or else in some open Place, as in his own Yard or Close that distreined them, or in some others by his Consent; so that the Owner may come lawfully to feed them: And the Owner of the Cattle must have Notice where they are, if they be not in a common Pound; and then if they die for want of Meat, it is the Owner's Fault (as it is said before), but if they be in a Pound *Covert*, or out of the County, and die for want of Meat, then he that distreined them shall make Satisfaction for them.

Pound Covert.

Cattle taken *Damage feasant*, may be impounded in the same Pound where they are *Damage feasant*; but Goods or Cattle taken for other Things may not. *Kitchin, f. 207.* But see after.

No

No Man ought to drive a Distress *Within the County, &c.* out of the County where it is taken, nor out of the Hundred, but to a Pound Overt within Three Miles; neither may a Distress be impounded in several Places; nor above Four Pence taken for the Fees of impounding one whole Distress, on pain of Five Pounds. *Co. 1 par. Inst. p. 57. Rastal Title Distress, 11.*

If a Man distrein Beasts *Damage feasant*, and put them in the Pound Overt within the same County, not above Three Miles out of the Hundred; and the Owner suffer the Beasts to die for lack of Meat, the Loss is his own, and he that distreined them may be at Liberty to bring his Action for the Trespass if he will; and if it be not a lawful Pound, then it is at the Peril of him that distreined them; and so it is if he drive them out of the Shire, and they die there. *Dr. & St. l. 1. c. 27.*

If the Owner of the Cattle tender Amends to him that distreined, and he refuse it, yet the Owner may not take his Cattle out of the Pound; for he may not be his own Judge: And if he do, a Writ *De parco facto* for breaking the Pound lieth against him;

him ; but he must sue a *Replevin* to have his Cattle delivered him out of the Pound, and afterwards plead his Tender of Amends, of which the Jury must end the Controversie. Also the Owner must look to give them Meat. *Ibid.*

Replevin.

But if the Owner of the Cattle procure a *Replevin* to deliver them, and he that distreined them resist it, and will not deliver them ; in this Case, if they die after for want of Meat, it is at the Peril of him that distreined, and the Owner shall recover Damages against him in an Action upon the Statute for not obeying the King's Writ. *ibid.*

De parco facto.

If a Man sends his Servant to take a Distress for a Rent or Service, who puts it in the Pound ; if the Owner of the Beasts, or a Stranger take them out, the Master shall have an Action *De parco facto* for breaking of the Pound.

In another's Close.

And if one distrein Cattle, and pound them in another Man's Close with his Consent, and the Owner of the Cattle come and take them out ; in this Case he that made the Distress shall have this Action for Pound-breach, and the Owner of the Close an

an Action of Trespafs for breaking of his Clofe.

If a Man break the Pound and take out my Goods, he that distreined may have a *Parco fracto* against the Party; and may also take the Goods again wherefover he finds them, and put them in the Pound again. *Co. Lit. f. 47. b. &c.*

A Man distreined for Ten Pounds ^{Two Distresses.} due at *Michaelmas* for Rent, Goods which were not of the value of Forty Shillings, and afterwards distreined for the Residue, and it was adjudged that he could not Avow, for the Distress is not good, and it was his Folly that would not take a sufficient Distress at first: But if a Man be behind of his Rent at several Days, and the Lessor take a Distress for one Day at one Time, and for another Day at another Time, this is good. *Moors Rep. pl. 26.* But see after, *Stat. 17 Car. 2.* and see the late Act.

If the Lord distrein the Cattle of ^{If by the Lord.} his Tenant, although nothing be behind, the Tenant for the Respect and Duty which he owed to the Lord, and which belongeth to him, shall not have an Action of Trespafs against him *Vi & Armis*: But if the Lord

Lord command his Bailiff in such Case to distrein where nothing is behind, the Tenant shall have an Action of Trespass *Vi & Armis* against the Bailiff. *Hughes's Grand Abridg.* 1 par. p. 311. c. 7. Co. 4. Rep. f. 11.

If there be Lord and Tenant by Rent or other Service, if the Rent be behind, the Lord may enter into the Tenant's House if the Door be open, and distrein for the Rent or Service, notwithstanding that the Tenant holdeth Lands in which he may distrein. 38 H. 6. 28. Co. 5 Rep. f. 92. But a Lord cannot break open the Gates, or break down Fences and Inclosures to take a Distress. Co. Lit. 161. a.

*For a Rent-
Charge.*

If a Man seised of Lands in Fee maketh a Lease for Life thereof, and afterwards he granteth a Rent-Charge, tho' the Grantee cannot distrein the Cattle of a Stranger who is in Possession of the Land for the Rent; yet if the Grantors Cattle come upon the Land, he may then Distrein them for the Rent. *Brownl.* 1 par. f. 32.

*Excessive
Distress.*

Note, The Statute of *Marlebridge*, Chap. 4. forbids the Lord to take excessive Distresses upon his Tenant for

For Rent or Services, on Pain of being grievously amerced. As for Example, If the Lord distrein Two or Three Oxen for Twelve Pence, or the like small Sum, and the Owner brings a Replevy of the Oxen, and then the Lord avow the taking of them for Twelve Pence; here of his own shewing he shall make Fine, &c. or the Party grieved may have his Action upon the Statute. *F.N.B. 89. 8 H. 4. 16. 11 H. 4. 2. Regist. 97. Co. 2: par. Inst. f. 107.*

But if the Lord distrein an Ox or an Horse for a Penny, if there were no other Distress upon the Land holden, then this Distress is not excessive; but if there were a Swine or Calf, &c. then the taking of the Ox or Horse is excessive, because he might have taken a Beast of less Value. *2 Co. Inst. f. 107.*

Yet an Information lies not against a Landlord for taking excessive Distress of Tenants, because he ought to be amerced by the Statute of *Marlebridge, c. 4.* Whereas upon an Information he must of necessity be fined. *1 Vent. 104. 2 Inst. 107. Raym. 193, 205. 1 Mod. 71, 288.*

No Information lies.

There

*Of Common
Right.*

There be certain Cases where a Man may distrein of common Right, and where not of common Right: A Man may distrein for Rent-Service, Homage, Fealty, Escuage, Suit of Court, or for Rent reserved upon a Gift in Tail, Lease for Life, Years, or at Will, though there be no Clause of Distress in the Lease; because these Distresses are of common Right. *Co. 1 par. Inst. f. 204, 205.*

*Services
incertain.*

But for Debt, Accompt, Trespass, or for Reparations, or the like, a Man cannot distrein, neither can any Distress be taken for any Services which are not certain, nor can be reduced, or brought into any Certainty. And upon an Avowry, Damages cannot be recovered for that which neither hath Certainty, nor can be reduced to Certainty. *Dr. & Stud. l. 3. c. 4. 9.*

*Incertaincy
reduced to
Certainty.*

Nevertheless (altho' it be a Paradox) in some Cases there may be a Certainty in an Incertaincy: As for a Man to hold of his Lord to shear all his Sheep depasturing within the Lord's Manor; and this is certain enough, altho' the Lord hath not always a certain Number of Sheep, but sometimes a greater Number, and sometimes a lesser; yet this Incertaincy

certainty being reduced to the Manor which is certain, the Lord may distrein for. And a Distress is inseparably incident to every Service that may be reduced to Certainty.

If there be Lord and Tenant, and the Tenant pay the Lord a greater Rent than is due to him, and that voluntarily without Coercion of Distress; in this Case the Lord having gained Seisin may distrein for such Surplusage of Rent, and the Tenant cannot avoid it upon the Lord's Avowry, because of the Seisin of the Rent; but in such Case he may have his Remedy by a Writ of *Ne injuste vexes* upon the Statute of *Magna Charta*, c. 10. *F. N. B.* 11. Co. 2 par. *Inst. f.* 21.

Surplusage of Rent.

But note, This Rule holdeth not in the Case of a Successor or Issue in Tail, for they may avoid such Incroachment in an Avowry; or if the Incroachment be of another Nature than the Service, if that it be gained by Coercion of Distress, in such Case the Tenant may avoid such Seisin in an Avowry. Co. 2 *Inst. f.* 21.

Exception.

A Rent-charge was granted for Years with a *Nomine pænæ* and Clause of Distress if it were not paid at the Day,

Rent-charge.

*Nomine
pænæ.*

Day, and the Rent was behind and the Years incurred, and it was moved if the Grantee might distrein for *Nomine pænæ* the Years being incurred; and the Opinion of the whole Court was, That he could not distrein for the *Nomine pænæ*, for that did depend on the Rent, and the Distress was gone as to both. *P. 19 Jac. in C.B. Tatter and Fryars Case. Winches Rep. f. 7.*

Estray.

If an Horse or Beast come into a Man's Ground as an Estray, he may not work them; neither may a Man work a Distress, for he hath neither Property or Possession *in Jure*; but if a Man hath an Horse, Ox or Cows in Pawn, he hath a special Property in them, and may work and use them in such sort as the Owner may do. *Owens Rep. f. 123. Cro. 2 part, f. 148.*

Forestalling Way.

If the Tenant forestall the Way with Force and Arms, and threaten in such manner that the Lord dares not come to demand or distrein for the Rent, or if there be no Distress on the Ground, nor none ready to pay the Rent; then in this Case the Lord may have a Writ of *Novel Disseisin* against the Tenant, and recover his Rent and Arrearages: And

*Novel Dis-
seisin.*

if the Rent be behind another Time, he may have a *Redisseisin*, and recover double Damages. *Co. on Litt. f. 153. b. and 161. b. Fleta l. 1. c. 42. Noys Max. p. 45.*

Also for Herriot-service the Lord *Herriots.* may distrein, but for Herriot-custom he cannot distrein, but may seize. *Dr. & St. f. 75.*

Tenant to pay a Herriot Beast, or 5 *l.* at the Election of the Lessor.

A Bailiff may not distrein for such Herriot before the Lessor hath declared his Election, tho' the Lessor may. *Lit. Rep. 33. 35.*

An Herriot shall go with the Reversion as well as the Rent, and for which the Grantor may distrein. *2 Saund. 166. Vide ante.*

And it seems that a Bailiff, where *Tender.* a lawful Tender of Rent has been refused, may not distrein without the Command of the Lessor. *Lit. 34. vid. ibid. 59.*

Where a Lease is made to com- *Herriot.* mence on the Determination of another, if the new Lessee dies before his Term commences, it's said the Herriot reserved shall not be due. *1 Vent. 91. 2 Saund. 165. 2 Keb. 677. 1 Sid. 437.*

Common.

If a Man have Common without Number, yet he ought not to surcharge the Soil, but that the Lord may have the Common also. 1 *Saund.* 345.

Surcharged.

And if a Tenant overcharge the Soil where he has Common, without Number, the Lord may distrein him, but an Admeasurement does not lie. *ibid.*

If a Stranger put his Cattle into the Common, a Commoner may distrein them; but in the Avowry he ought to shew Damages. 2 *Lev.* 252. 3 *Lev.* 104: And that the Lord of a Common cannot put in the Cattle of a Stranger. 1 *Lutwich Rep.* 107. See afterwards Chap. 7.

Lease ended.

Tho' a Man may not distrein for Rent after the Lease is ended, nor out of the Premisses (except in some special Cases), nor in the Night unless for Damage feasant:

Executors may.

Yet the Executors or Administrators of him who had Lands in Fee, or Fee-tail, or for Life, may either have an Action of Debt against him that should pay it, or distrein for it; and so may the Husband after the Death of his Wife, his Executors or Administrators, and he which hath Rent for another's Life for the Arrearages after his Death.

The

The Grantee of a Reversion may *Grants.*
distrein for an Herriot. 2 *Saund.*
166.

If the Beasts 'escape into any *Beasts*
Ground and the Lord distrein them for *escape*
Rent, the Distress is good. *Idem* 289,
290. And that 'tis not material whe-
ther they were Levant or Couchant,
or not. See after.

Where Cattle escaped out of a *Want of*
Close next adjacent, adjudged that *Fences.*
they might be distrein'd for Rent,
altho' they escape through Default of
the Fences, which the Party distrain-
ing ought to have repaired. *Id.* 289.

A Lord of the Soil may distrein *Soil ad.*
for *Damage feasant*, altho' he have *merged.*
no Interest in the Herbage, for there
may be other Damage besides eating
the Grass. *Idem.* 328.

A Man puts Cattle into my Pa- *Cattle de-*
sture for a Week, and afterwards I *pasturing.*
give him Notice that I will keep
them no longer, and he will not
fetch them away; I may then distrein
them *Damage feasant.* *Noys Max.*
p. 33.

If a Man take Cattle *Damage fea-* *Rescous*
sant, and as he is driving them to *whers.*
Pound, they run into the Yard or
House of the Man that owns them,
and he refuses to let them out again,
he

he that distreined them may have a Writ of *Rescous* against the Owner of the Beasts for so doing.

Where not.

If a Landlord come to distrein for Rent, and see the Cattle, and the Lessee or his Servants drive them out of his Fee, he cannot have a Writ of *Rescous*, because the Cattle were not in his Possession: But he may follow after them, and distrein them in another Man's Ground, it being for Rent, but not for *Damage feasant*; for they must be taken *Damage feasant*; that is, doing Damages. Co. 1 par. Inst. f. 161.

Cause to be shown.

If a Man distrein Goods, and declare not the Cause or Reason wherefore he doth it, if they be put in House, the Owner may break the House and take them out. *Clayton's Rep. p. 64. pl. 111.*

Rescue lawful.

Or if a Man distrein Goods without Cause, the Owner may rescue them; but if they be pounded, he cannot break the Pound and take them out, because they are then in the Custody of the Law.

But if he find the Pound-door unlock'd, he may take them out.

General Prohibition.

Altho' there be a general Prohibition in the Laws of *England*, that it shall not be lawful for any Man to enter

enter upon the Freehold or Possession of another, without Permission and Authority of the Owner, or of the Law; yet this is not without Exception.

For if a Man drive Beasts along the High-way, and the Beasts run into any Man's Corn or Grass, and he that driveth them goeth after them into the Grounds to fetch them out, he may justifie that Entry into the Grounds to fetch them out. *Dr. & St. l. 1. c. 10.* *Exception.*

Also hindring the carrying of a lawful Distress is a Provocation to make Killing no more than Homicide. *1 Vent. 216. the Case of Goff Collector of Chimney-Money.* *Homicide.*

The Court held, that Cattle driving to a Market, and put into Pasture by the Way, were not privileged from being distreined; for 'tis by the Statute of *Marlebridge*, that Beasts cannot be distreined in the High-way, and not by the Common Law. *2 Vent. 50. 3 Lev. 260.* *Cattle driving to a Market.*

Where one holds a third Part of certain Land, and another two third Parts of the same Land undivided, he who hath the one Part cannot distrein the Cattle which were put in by Licence of him who hath the *Licence.*

the two Parts. *Id.* 228. 283. *Hob.* 80.
103.

*Upon a
Feoffment.*

If a Man make a Feoffment, and that in Fee by Indenture reserving a Rent, he cannot distrein for that Rent unless a Distress be expressly reserved; and if the Feoffment be made without an Indenture reserving Rent, that Reservation is void in the Law. And the like Law is where a Gift in Tail, or a Lease for Term of Life is made, the Remainder over in Fee reserving a Rent, that Reservation is void in the Law.

*Clause of
Distress.*

Also if a Man seised of Land for Term of Life granteth away his whole Estate reserving a Rent, that Reservation is void in the Law, without it be by Indenture: And if it be by Indenture, he shall not distrein for the Rent, without a Clause of Distress be reserved. *Dr. & St. l. 2. c. 9.*

*Rent re-
served at
Two Feasts.*

Also if a Man make a Lease at *Michaelmas* for a Year, reserving a Rent payable at the Feast of the Annunciation of our *Lady*, and *St. Michael* the Arch-Angel; in this Case he may distrein for the Rent due at our *Lady-day*, but not for the Rent due at *Michaelmas*, because the Time will be expired. *Ibid.*

But

But see after the late Acts. Yet if a Man makes a Lease at the Feast of *Christmas*, for to endure to the Feast of *Christmas* next following, viz. for a Year, reserving a Rent at the aforesaid Feasts of our *Lady-day* and *Michaelmas*; in this Case he shall distrein for both the Rents as long as the Term continues, that is to say, 'till the aforesaid Feast of *Christmas*. *Ibid.*

And if a Man have Lands for Term of Life of *J. N.* and makes a Lease for Term of Years, reserving a Rent, the Rent is behind, and *J. N.* dieth; there he shall not distrein, because his Reversion is determined. *Ibid.*

And if a Town or Parish be amerced, and the Neighbours by Assent assess a certain Sum upon every Inhabitant; and agree, that if it be not paid by such a Day, that certain Persons thereunto assigned shall distrein; in this Case the Distress is lawful. *Ibid.*

If there be Lord and Tenant, and if the Tenant do hold of the Lord by Fealty and Rent, and the Lord doth grant away the Fealty, and reserve the Rent, and the Tenant attorneth; in this Case he that was

I

Lord

Reversion
determin'd.

Assessment
by a Town.

Rent-Seck.

Lord may not distrein for the Rent, for it is become a Rent-Seck. *Ibid.*

Upon a Gift
in Tail.

But if a Man make a Gift in Tail to another, reserving Fealty and certain Rent, and after that he granteth away the Fealty, reserving the Rent and the Reversion to himself; in this Case he shall distrein for the Rent, for the Grant of the Fealty is void; for the Fealty cannot be severed from the Reversion. *Ibid.*

Upon an
Assignment
of Rent.

Also if a Rent be assigned to make a Partition or Assignment of Dower Egal, he or she to whom that Rent is assigned may distrein. And in all these Cases aforesaid, where a Man may distrein, he may not distrein in the Night; but for *Damage feasant*, that is, where he finds Beasts doing hurt in his Ground, he may distrein them Night or Day when he finds them; but for Waste, Reparations, Accompts, or for Debts upon Contracts, or such like, no Man can lawfully distrein.

Amends
tendered.

If Beasts be distreined *Damage feasant*, Tender of sufficient Amends makes the Distreiner liable to Damages for Detainer, though not for the Distress. *Lit. Rep. 34. Vide c. 5.*

A Copy of an Act made in the Second Year of the Reigne of King William and Queen Mary, for enabling the Sale of Goods distrained for Rent.

WHereas the most ordinary and ^{Defect of} ready Way for Recovery of ^{former} Arrears of Rent is by Distress; yet ^{Laws.} such Distresses not being to be sold, but only detained as Pledges for enforcing the Payment of such Rent, the Persons distreining have little Benefit thereby.

For the remedying thereof, be it ^{Remedy.} enacted and ordained by the King and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authority of the same,

That from and after the first Day of June, in the Year of our Lord One thousand six hundred and ninety, That where any Goods or Chattels ^{Goods and} shall be distrained for any Rent, re- ^{Chattels} served and due upon any Demise, ^{distrained} Lease or Contract whatsoever; and ^{for Rent.} the Tenant or Owner of the Goods

*If not replevied
within five
Days after
Notice.*

*How they
may be ap-
praised.*

*By two
sworn Ap-
praisers.*

so distreined, shall not within five Days next after such Distress taken, and Notice thereof (with the Cause of such Taking) left at the Chief Mansion-House, or other most notorious Place on the Premises, charged with the Rent distreined for, replevy the same, with sufficient Security to be given to the Sheriff, according to Law; That then in such Case after such Distress and Notice as aforesaid, and Expiration of the said five Days, the Person distreining shall and may with the Sheriff or Under-Sheriff of the County, or with the Constable of the Hundred, Parish, or Place where such Distress shall be taken (who are hereby required to be aiding and assisting therein) cause the Goods and Chattels so distreined to be appraised by two sworn Appraisers, (whom such Sheriff, Under-Sheriff, or Constable, are hereby impowred to swear) to appraise the same truly, according to the best of their Understandings; and after such Appraisement, shall and may lawfully sell the Goods and Chattels so distreined, for the best Price that can be gotten for the same, towards Satisfaction of the Rent, for which the

the said Goods and Chattels shall be distrained, and of the Charges of such Distress, Appraisement and Sale, *Concerning the Over-plus.* leaving the Overplus (if any) in the Hands of the said Sheriff, Under-Sheriff, or Constable for the Owner's Use.

And whereas no Sheaves or Cocks *As to Corn* of Corn loose, or in the Straw, or Hay, *and Hay.* in any Barn or Granary, or on any Hovel, Stack or Rick, can by the Law be distrained, or otherwise secured for Rent, whereby Landlords are oftentimes cozened and deceived by their Tenants, who sell their Corn, Grain and Hay to Strangers, and remove the same from the Premises chargeable with such Rent, and thereby avoid the Payment of the same.

Be it further enacted by the Authority aforesaid, That for remedying the said Practice and Deceit, it shall and may, from and after the said first Day of *June*, be lawful to and for any Person or Persons having Rent Arrear, and due upon any such *How Corn* Demise, Lease, or Contract, *and Hay* as aforesaid, to seize and secure any *may be seized and secured where found.* Sheaves or Cocks of Corn, or Corn loose, or in the Straw, or Hay, lying or being in any Barn or Granary,

As a Distress still replevied.

Not to be removed till replevied or sold.

In Case of Pound-Breach or Rescous.

The Party shall recover treble Damages and Costs.

nary, or upon any Hovel, Stack or Rick or otherwise, upon any Part of the Land or Pound charged with such Rent, and to lock up or detain the same in the Place where the same shall be found, for and in the Nature of a Distress, until the same shall be replevied upon such Security to be given as aforesaid; and in Default of replevying the same as aforesaid, within the Time aforesaid, to sell the same after such Appraisement thereof to be made, so as nevertheless such Corn, Grain, or Hay so distreined, as aforesaid, be not removed by the Person or Persons distreining to the Damage of the Owner thereof, out of the Place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied or sold, in Default of replevying the same within the Time aforesaid.

And be it further enacted by the Authority aforesaid, That upon Pound-Breach, or Rescous of Goods or Chattels distreined for Rent, the Person or Persons grieved thereby, shall in a special Action upon the Case, for the Wrong thereby sustained, recover his and their treble Damages and Costs of Suit against the

the Offender or Offenders in any such Rescous or Pound-Breach, any, or either of them, or against the Owners of the Goods distreined, in case the same be afterwards found to have come to his Use or Possession.

Provided always, and be it further enacted, That in case any such Distress and Sale as aforesaid, shall be made by Vertue or Colour of this present Act for Rent, pretended to be arrear and due, where in Truth no Rent is arrear or due to the Person or Persons distreining, or to him or them in whose Name or Names, or Right, such Distress shall be taken, as aforesaid, that then the Owner of such Goods and Chattels distreined and sold as aforesaid, his Executors or Administrators, shall and may by Action of Trespass, or upon the Case to be brought against the Person or Persons so distreining, any or either of them, his or their Executors or Administrators, recover double of the Value of the Goods or Chattels so distreined and sold, together with full Costs of Suit.

*If Goods be
distreined
and sold
where no
Rent is due.*

*The Owner
shall recover
double
Value and
full Costs.*

Observations.

Upon this Act some have made these Observations, *viz.* by the latter Clause of this Act it seems, that if Goods be distreined upon Pretence for Rent, where none is due, yet no Action lies by this Act, unless they were also sold as well as distreined, so that the Party must not in this Case replevy his Goods, if he intend to take the Benefit of this Act.

But he may replevy them or let them lie, and have the Benefit of the former Law.

Corn, &c.

So the Party distreining Corn and Hay, and keeping it upon the Place under Pretence of Rent, is liable as formerly to an Action and Damages, if he cannot justifie that Rent was then due; and if he can, he may detain them there till replevied or sold by Vertue of this Act.

Tender of Rent, &c.

And yet it seems, that after Appraisement of the Corn or Hay, and Tender of the Money, and reasonable Charges by some Person willing to buy the same; he may not detain the Corn or Hay longer in the Barn, Grahary, Hovel, &c. for this would be great Prejudice to the Owner, if the Party distreining

ing may sell them, after Appraisement, when and to whom he will.

Sed quær.

The Words are, *Be not removed to Removal the Damage of the Owner thereof.* This *when.* might have been enough, if the Party distreining had Right, he is bound to take Care of Damage.

But it seems the Corn and Hay must not be removed, for the following Words are,

But be kept there (as impounded) *Appraisement, &c.* until the same shall be replevied or sold within the Time aforesaid; that is, after the Appraisement. And it is the Party distreining that shall and may cause them to be appraised, after five Days Notice: But *quære* when or how soon after, see the following Act.

YOU shall well and truly, accord- *A Form of*
ing to the best of your Understand- *Charge or*
ing, appraise the Goods and Chattels of *Oath to*
H. R. distreined on for Rent by O. P. *be admini-*
of which Goods and Chattels you shall *strated to the*
have good Sight and Consideration. *Appraisers.*

So help you GOD.

I s

By

*By an Act made Anno. 8^a Annæ
Reginæ, for the better Security of
Rents, and to prevent Frauds
committed by Tenants.*

*Rent to be
paid before
Goods shall
be taken in
Execution.*

IT is enacted, That from and after the first Day of May, 1710. No Goods or Chattels whatsoever lying or being in or upon any Messuage, Lands or Tenements, which are or shall be leased for Life or Lives, Term of Years, at Will, or otherwise, shall be liable to be taken by vertue of any Execution on any Pretence whatsoever, unless the Party, at whose Suit the said Execution is sued out, shall before the Removal of such Goods from off the said Premises, by vertue of such Execution or Extent, pay to the Landlord of the said Premises, or his Bailiff, all such Sum or Sums of Money as are or shall be due for Rent for the said Premises at the Time of the taking such Goods or Chattels by vertue of such Execution.

*Not to ex-
ceed one
Years Rent.*

Provided the said Arrears of Rent do not amount to more than one Years Rent; and in case the said Arrears shall exceed One Years Rent, then the said Party, at whose Suit such

Exe-

Execution is sued out, paying the said Landlord or his Bailiff one Years Rent, may proceed to execute his Judgment, as he might have done before the making of this Act: And the Sheriff or other Officer is hereby impowered and required to levy and pay to the Plaintiff, as well the Money so paid for Rent, as the Execution Money.

And that in case any Lessee for *Distress* Life or Lives, Term of Years, at *upon a* Will, or otherwise, of any Messuages, Lands or Tenements, upon the *fraudulent Removal of Goods.* Demise, whereof any Rents are or shall be reserved or made payable, shall from and after the first Day of *May* fraudulently or clandestinely convey or carry off or from such demised Premisses his Goods or Chattels, with intent to prevent the Landlord or Lessor from distreining the same for Arrears of such Rent so reserved as aforesaid: It shall and may be lawful to and for such Lessor or Landlord, or any Person or Persons by him for that Purpose lawfully impowered, within the Space of Five Days next ensuing such conveying away or carrying off such Goods or Chattels as aforesaid, to take and seize such Goods and Chattels where-
ever

ever the same shall be found, as a Distress for the said Arrears of such Rent ; and the same to sell or otherwise dispose of in such Manner, as if the said Goods and Chattels had actually been distressed by such Lessor or Landlord, in and upon such demised Premises for such Arrears of Rent ; any Law, Custom or Usage to the contrary in any wise notwithstanding.

*Exception
of Sale
Bonâ fide.*

Provided nevertheless, that nothing in this Act contained shall extend, or be construed to extend, to empower such Lessor or Landlord to take or seize any Goods or Chattels as a Distress for Arrears of Rent, which shall be sold *Bonâ fide*, and for a valuable Consideration, before such Seizure made.

Actions against Tenants for Life, &c.

And that whereas no Action of Debt lay against a Tenant for Life or Lives, for any Arrears of Rent during the continuance of such Estate, 'tis enacted, That it shall and may be lawful for any Person or Persons having Rent in Arrear, or due upon any Lease or Demise for Life or Lives, to bring an Action of Debt for such Arrears of Rent, in the same Manner as they might have done in case such Rent were due
and

and reserved upon a Lease for Years.

And that all Distresses to be made as aforesaid, shall be liable to such Sales, and in such Manner, and the Moneys arising by such Sales to be distributed in like Manner, as by an Act made in the Second Year of the Reign of their late Majesties King William and Queen Mary, (intituled, *An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in reasonable Time,*) is in that Behalf directed and appointed.

*Distresses
how liable
to Sale.*

And that whereas Tenants *Pur Remedy a-*
auter vie (that is, for Life of another Person) and Lessees for Years, or at Will, frequently hold over the Tenements to them demised, after the Determination of such Leases. And whereas after the Determination of such or any other Leases, no Distress can by Law be made for any Arrears of Rent, that grew due on such respective Leases before the Determination thereof; 'tis enacted, That it shall and may be lawful for any Person or Persons, having any Rent in Arrear, or due upon any Lease for Life or Lives, or for Years, or at Will, ended or determined, to distress for such Arrears after the Determination of the said respective Leases,

*gainst Te-
nants hold-
ing over
their Leases.*

Leases, in the same Manner as they might have done, if such Lease or Leases had not been ended or determined.

At what Time.

Provided, That such Distress be made within the Space of Six Calendar Months after the Determination of such Lease, and during the Continuance of such Landlord's Title or Interest, and during the Possession of the Tenant from whom such Arrears became due.

Saving to her Majesty, &c.

But that nothing in this Act contained shall extend, or be construed to extend, to let, hinder, or prejudice her Majesty, her Heirs or Successors in the levying, recovering or seizing any Debts, Fines, Penalties or Forfeitures, that are or shall be due, payable or answerable to her Majesty, her Heirs or Successors, but that it shall and may be lawful for her Majesty, her Heirs and Successors, to levy, recover and seize such Debts, Fines, Penalties and Forfeitures, in the same Manner as if this Act had never been made.

Note,

Note, By an Act of Parliament 17 Car. 2. made at Oxford, in the Seventeenth Year of King Charles the Second, cap. 7.

it is enacted, That whensoever any Plaintiff in Replevin shall be non-*Plaintiff* suit before the Issue joined in any *Non-suited.*

Suit of Replevin, by Plaint or Writ lawfully returned, removed, or depending in any of the King's Courts at *Westminster*; That the Defendant making a Suggestion in Nature of *Suggestion.*

an Avowry or Cognizance for such Rent, to ascertain the Court of such Cause of Distress. Then the Court

upon his Prayer, shall award a Writ *Writ of Inquiry to the Sheriff.* to the Sheriff of the County where the Distress was taken, to enquire

by the Oaths of Twelve good and lawful Men of his Bailiwick, touching the Sum in Arrear at the Time of such Distress taken, and the Value of the Goods or Cattle distreined; and upon fifteen Days Notice *Notice.*

given to the Plaintiff or his Attorney in Court, of the Sitting of such Inquiry, the Sheriff may enquire of the Truth of such Matters contained in the Writ, by the Oath of Twelve Men, &c. And upon return of the Inquisition, the Defendant (that is, he that distreined) shall have Judgment to recover against

*Value.**Verdict
against the
Plaintiff,
&c.*

gainst the Plaintiff the Arrearages of such Rent, in case the Goods or Cattle distreined shall amount unto that Value; and in Case they shall not amount unto that Value, then so much as the Value of the said Goods and Cattle shall amount unto, together with his full Costs of Suit, and shall have Execution thereupon by *Fieri facias*, or *Elegit*, or otherwise, as the Law shall require. And in case such Plaintiff shall be nonsuit after Cognizance or Avowry made, or Issue joined, or if the Verdict shall be given against such Plaintiff, then the Jurors that are impannelled or returned, to enquire of such Issue, shall at the Prayer of the Defendant, enquire concerning the Sum of the Arrearages, and the Value of the Goods or Cattle distreined; And thereupon the Avowant, or he that makes a Conufance, shall have Judgment for such Arrearages, or so much thereof as the Goods and Cattle amount unto, together with his full Costs, and shall have Execution of the same as abovesaid.

And

And if the Judgment in any of the Courts aforesaid be given upon Demurrer for the Avowant, or him that maketh Conusance for any Rent, the Court shall, at the Prayer of the Defendant, award a Writ to enquire of the Value of such Distress; and upon the Return thereof, Judgment shall be given for the Avowant, or him that makes Conusance as aforesaid, for the Arrears alleged to be behind in such Avowry or Conusance, if the Goods or Cattle so distrained shall amount to that Value; and in case they shall not amount to that Value, then for so much as they amount unto, together with his full Costs of Suit, and have Execution thereof, as aforesaid.

Judgment upon a Demurrer.

And in all Cases aforesaid, where the Distress is not of the Value of the Rent Arrear, there the Party to whom these Arrearages are due, his Executors or Administrators, may from Time to Time distress again for the Residue of the said Arrears, which formerly a Man could not do; for he might not distress twice for one Rent; for it was accounted his Folly, that he took not a sufficient Distress at First: But now by the Statute, That and several

Second Distress for the Residue.

ral other Advantages are taken away from the Tenant.

4 & 5
Ann.

By the late Act for the Amendment of the Law, 4 & 5 *Anna*, It is lawful for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in Replevin in any Court of Record, with the Leave of the same Court, to plead as many several Matters thereto, as he shall think necessary for his Defence.

Costs given.

Provided, That if any such Matter shall, upon a Demurrer join'd, be judged insufficient, Costs shall be given at the Discretion of the Court. Or if a Verdict shall be found upon any Issue in the said Cause for the Plaintiff or Defendant, Costs shall also be given in like Manner; unless the Judge who tried the said Issue shall certify, That the said Defendant or Tenant, or Plaintiff in Replevin, had a probable Cause to plead such Matter, which upon the said Issue shall be found against him. See more of *Replevin* in the next Chapter.

CHAP. V.

Of Rescous, in what Cases it may be Lawful: Of Replevins, how they are to be sued out; and of Avoweries to Declarations upon Replevins.

THE Word or Term *Rescous* is derived from an old Norman Verb *Rescous* *what.* *Rescours*, which is in the Latin *Recuperare*, that is, to take from; to get again, or recover: So that *Rescue* is as much as to say, to recover or get again what another hath taken away. *Cook 1 par. Inst. 160.*

And in the Sense of the Law *Rescous* is a taking away and setting again at Liberty Goods distrained, or the Body of a Person arrested, and in an Officer's Custody by virtue of legal Process.

Such Kinds of *Rescous* as appertain of *Distress* unto our present Subject are of *Distress* *see* *Distresses* taken, in what Cases it may be justifiable to *rescue* Goods or Cattle distrained, and where not.

When.

If a Landlord distrein when there is no Rent due, the Tenant may make a *Rescue*, and hinder that Distress. *Co. l. 4. f. 11.*

Lawful.

In like manner if a Landlord come to distrein, and the Tenant tender his Rent unto him, and the Lord will distrein notwithstanding; in this Case the Tenant may make *Rescous*. *1 Par. Inst. f. 160.*

In Highway.

If Rent be in Arrear, and the Lord distrein the Tenants Cattle in the High-way within his Fee; here also the Tenant may *rescue* them, for no Man may destrein in the High-way but the King and his Officers by special Authority. *Cook, ibid. Magna Charta, f. 25.*

Averia Carrucæ.

In like manner, if a Landlord distrein *Averia Carrucæ*, Goods of the Plough, where there is a sufficient Distress to be taken besides; or if the Lord distrein any Thing that is not distreinable by Common Law or Statute: In this Case it is lawful for the Tenant to make *Rescue*. *Ibid. f. 122. Rastal tit. Distress 10.*

But if a Lord come to distrein Cattle which he seeth within his Fee, and the Tenant or any others to prevent the Distress drive the Cattle away out of the Fee; the Lord

Lord may follow them with fresh *Fresh Suit.*
 Suit and distrein the Cattel, and the
 Tenant cannot justifie a *Rescous* of
 them, because in the Judgment of
 the Law the Distress is taken within
 his Fee. *Hughs Grand Abr.* 1 part,
 p. 217. C. 21.

But if the Lord be coming to di- *Rescue ju-*
 strein, and have not sight of the Cat- *stifable.*
 tel within his Fee, though the Te-
 nant drive them off on purpose, or
 if the Cattle after the View go out
 of the Fee of their own Accord, or
 if the Tenant after the View remo-
 veth them for any other Cause than
 to prevent the Distress; then if the
 Lord distrein them out of his Fee,
 the Tenant may justifie a *Rescue.* *Co.*
1 par. Inst. fol. 161.

If the Lord distrein out of his Fee
 in Lands not holden of him, the Te-
 nant may make *Rescous*, unless in the
 Cases aforesaid. *Co. Lit.* 161. a.

If *Rescous* be returned without *Rescous re-*
 shewing the Place where *Rescous* was *turned.*
 made, it is void. *Mo. Rep.* 112.
pl. 562.

If a Man come to distrein Cattle *Damage*
Damage feasant, and see the Beasts in *feasant.*
 his Ground, and the Owner of the
 Cattle drives them out before the
 Distress taken; the Owner of the
 Ground

Ground cannot follow and take them, for if he do, the Owner of the Cattle may *Rescue* them, for they must be *Damage feasant*; that is, doing Hurt at the Time of the Distress taken, and the Owner of the Ground may bring his Action of Trespass. *Cook ibid.*

Disseisin.

The Lord cannot break open any Gate that is locked, nor break open any Inclosure to take a Distress: So that if a Tenant lock up his Gates and inclose his Ground, so that the Lord cannot come to distress, if the Rent be behind, and the Lord have had actual Possession, this is a *Disseisin*. *Cook ibid.* But see the late Acts.

Replevin.

For the Ease and speedy Remedy of the Country in case of Distresses where the Cattle be pounded, the Statute hath provided, That every Sheriff at his own County Day, or within two Months after he first receives his Patent, is to depute and proclaim in his Shire-Town four Deputies to make Replevins within his County, which must reside within twelve Miles one of another, on pain of five Pounds a Month for every Month they are wanting.

*Sheriffs
Deputies.*

So that when any Man's Goods are distreined or impounded, he may repair to one of the Sheriffs Deputies for that Purpose; and there he may have a Replevin (upon *Plegii de Return. habendum si, &c.*) to cause the Goods distreined to be delivered to the Owner.

There is likewise a Writ *de Replegiari. facias* at the Common Law, whereby the Sheriff is commanded, taking Pledges of Prosecution, to redeliver the Goods distreined to the Owner: But since the other is the readier and easier Way, this Writ is out of Fashion.

In a Replevin, he whose Goods are distreined or impounded becomes the Plaintiff, and declares against the other for unjustly taking and detaining his Goods or Cattle *contra vad. & pleg. &c.* *Tenant is Plaintiff.*

If a Landlord distrein, and carry the Distress to hold, or out of the County, so that the Sheriff upon a Replevin cannot redeliver the Goods, then upon the Sheriff's return of the Replevin, Tenants may have a Writ of *Withernam* directed to the Sheriff, to take as many of the Lord's Beasts, or as much Goods in his keeping, 'till he have made Deliverance of the first

first Distress; and if the Goods or Cattle be conveyed to a Fort or Castle, the Sheriff may command the Power of the Country, and beat it down. *Rastal. tit. Distresses* 7.

Franchise.

If a Distress be made in a Franchise or Bailiwick, the Sheriff is to direct his Replevin to the Bailiff thereof to deliver them upon Pledges, &c.

Sheriff may enter.

And if he make no Answer, or return that he will make no Deliverance, or the like, then the Sheriff may enter into the Liberty and make Deliverance; and if the Distress was taken without the Liberty, and impounded within the Liberty, then the Sheriff may enter and make Deliverance, and need not first to make a Warrant to the Bailiff of the Liberty. *Stat. Marlbr. c. 21. West. 1. c. 17. 2 Co. Inst. 140. 194.*

Property.

The Plaintiff in the Replevin ought to have the Property of the Goods in him at the Time of the Distress made; for if the Defendant claim Property, the Sheriff cannot Replevy the Distress, but the Property must be tried by Writ.

So that if the Defendant claim Property in the Goods distreined, then must the Plaintiff in the Replevin

vin

vin have a Writ *de Proprietate probanda*, directed to the Sheriff to try the Property; and if the Jury find for the Plaintiff, then the Sheriff must make Deliverance of the Distress: And if it pass for the Defendant, the Sheriff can proceed no further unless the Plaintiff bring a Writ of *Replegiari facias* directed to the Sheriff, and then, tho' he do return the Property, yet it shall proceed to Trial in the Common-Pleas upon the Issue of the Property. *Co. 1 par. Inst. f. 145.*

And 'tis noted, that there are two *Two Kinds.* Kinds of Properties; that is, a General Property, which every absolute Owner hath; and a Special Property, as of Goods pledged or taken to manure ones Lands, and the like; and of both these a Replevin doth lie. *Co. Lit. 145. b.*

But a Man cannot claim Property by his Bailiff or Servant.

The Defendant in a Replevin, that is, he that made the Distress, may, if he see Cause, bring a Writ of *Recordare*, and so remove the Pleint upon the Replevin, out of Sheriffs County-Court into the Common-Pleas; and if the Plaintiff declare not, he may have a *Retorn' habend.* And then if

K he

he declare not, a Writ to enquire of Damages. 2 Co. Inst. 339.

Pone.

And if a Replevin be depending by Writ out of *Chancery*, the Plaintiff or Defendant may remove the Plea by a *Pone*, and if the Plea be depending in the County, the Plaintiff may remove the same without Cause, but the Defendant cannot move the same without Cause, which must be inserted in the end of the Writ. 2 Co. Inst. 339. Reg. Orig. 84. F. N. B. 69.

*Ref-rvati-
on void.*

If a Man by his Deed grant a Rent with a Clause of Distress, and grant further that he shall keep the Goods distrained against Sureties and Pledges 'till the Rent be paid; this Grant is not good, but the Sheriff may replevy the Goods distrained notwithstanding: For if such a Distress should be irrepleviable, the current of Replevins should be stopped, to the great Damage of the Subject.

Joinder.

If the Goods or Cattle of several Men be distrained, they cannot join in a Replevin, but every Man must have a several Replevin: For in a Replevin it is a good Plea to say, the Property is to the Plaintiff and to a Stranger; and where there be Two Plaintiffs, that the Property is

Property.

to one of them. Co. 1 par. Inst.

f. 145.

If a Man take a Distress in one *Driving* County and drive it into another, *Distress.* the Owner of the Cattle may sue a Replevin in which County he pleaseth. *Comp. Att. 131.*

In a Replevin if it be of two Cat- *Dead Cat-* tle, one living the other dead, the *tle, &c.* Living shall be first demanded. *Finch.*

l. 1. c. 3. p. 25.

If the Cattle of a *Feme-Sole* be taken, and afterwards she taketh a Husband, now he alone may sue a Replevin. *Ibid.*

If the Plaintiff in Replevin do not *Declara-* set out the Place where the Distress *tion.* is taken as well as the Town, his Declaration will be naught, and the Avowant may overthrow him upon a Demurrer. *Hob. Rep. 16. int' Read and Hawkes.*

If a Lord destrein his Tenant wrongfully, although the Cattle be come back again to the Owner; yet the Tenant may have a *Replevin* against the Lord, because he cannot have an Action of Trespass against him.

The Plaintiff in a *Replevin* ought *Caution.* to be careful in giving his Instructions for it, for it must be certain in

setting down the Number and Kinds of the Cattle which are distreined, otherwise the *Replevin* is not good.

Avowry.

The *Avowant* is the Defendant in a *Replevin*; that is, he that made the Distress; and when he justifies in his Plea for what Cause he distreined, that Plea is called his *Avowry*.

In his own Right.

As if a Landlord distreins for Rent in Arrear, and the Tenant or Owner of the Cattle brings a *Replevin*, and declares against him for unjustly taking and detaining his Cattel, and the Defendant justifies he took it in his own Right, and so shewing the Cause of the taking in his Plea: This is an *Avowry*.

Consuſance as Bailiff.

But if the Defendant took the Distress for or in the Right of another, then when he hath shewed the Cause in his Plea, he must make *Consuſance* or Acknowledgment of the taking the Distress, as being Bailiff or Servant unto him in whose Right he took it.

What Avowries.

There are Four manner of *Avowries* which a Lord may make upon a *Replevin*.

1. *Avowry* upon his very Tenant.
Co. l. 9. f. 135, 136.

2. Upon

2. Upon his very Tenant by the Manor where the Tenant had but a particular Estate.

3. Upon his Tenant by the Manor where the Lord had but a particular Estate ; and these Three are Avowries at the Common Law.

4. The Lord may avow upon the *21 H. 8.* Matter in the Land as within his Fee : *6. 19.*

This is provided by the Statute *21 H. 8. c. 19.* and is the safest Way for the Benefit of the Lords ; for by this Statute, a Lord may avow the taking a Distress, as in Lands holden of him within his Fee, without naming of any Person in certain ; which by the Common Law they could not do, but were thereby compelled to avow upon a Person in certain, which often proved much to their Damage and Prejudice : For by the secret Fines, Recoveries, Grants, and Conveyances, which the Tenants used purposely to frame to defraud their Lords , they were ignorant upon whom to make their legal Avowry ; which Inconveniences the fore-mentioned Statute hath prevented.

Now in an Avowry upon this Statute, the Plaintiff in the Replevin, be he Tenant for Years or otherwise, *Plaintiff's Advantage. Vide ante.* may

may have every sufficient Answer and Aid, and every other Advantage in the Law to the Avowry, Disclaims only excepted; for because the Avowry is made upon no certain Person, he cannot disclaim.

*Costs and
Damages
for the De-
fendant.*

And if such Plaintiffs be nonsuited or barr'd, or overthrown by the Avowry, then the Defendant or Avowant shall recover Costs and Damages against the Plaintiff, as the Plaintiff should have done if he had recovered in the Replevin against the Avowant.

If any Avowry is made for Rent, and it appears by the Party's own shewing that Part of it is not yet due, yet the Avowry may be good for the Residue. 1 Saund. 285.

But if it appears, that an Avowant has Title only to two Parts of the Rent, for which he avows, the whole Avowry shall abate. *Idem.* 286.

*Nomine
Pænæ.*

Also in an Avowry for Rent, and *Nomine pænæ*, together without alleging any Demand of Rent, the Avowry is good for the Rent, altho' it is ill for the Penalty. *Ibid.*

Bar.

Avowry for Rent due at a latter Day, is not a Bar in Avowry for Rent due at a former Day; neither is a Recovery in Debt for Rent due at

a latter Day, a Bar in Debt for Rent due at a former Day, as an Acquittance is. 1 Lev. 43.

In Replevin, the Defendant pleaded they were the Beasts of a Stranger: Whereupon Plaintiff demurred, because 'twas only a Plea in Abatement. The Court said, it was good either in Bar or Abatement, and that there needed no Avowry for a Return, because the Beasts being not the Plaintiffs, the Avowant is to have the Return; and Judgment was given for the Defendant. 2 Lev. 92. See before Stat. 17 Car. 2. at the end of Chapt. 4.

Arrear-
ages l. 11.

If a Tenant hath Rent behind for divers Years, and makes a Feoffment in Fee, and the Lord accept the Rent or Service of the Feoffee due in his Time, he shall lose the Arrearages of his Rent due in the Time of the Feoffor: For after such Acceptance, the Lord cannot avow upon the Feoffor, nor upon the Feoffee, for the Arrearages due in the Time of the Feoffor; but if the Feoffor dieth, although the Lord accept the Rent or Service by the Hands of the Feoffee due in his Time, yet he shall not lose the Arrearages, because he is now by the Law compelled to a-

vow upon the Feoffee ; and what the Law enjoins him to, shall not be prejudicial unto him.

*Nonsuit,
&c.*

If the Plaintiff in a Replevin be nonsuit, or otherwise by Avowry barred or overthrown ; then the Defendant or Avowant shall recover Costs and Damages against the Plaintiff, as the Plaintiff should have done or had, if he had recovered in the Replevin against the Avowant. See before Chap. 4.

For the learning of Avowries, see *D'Anvers General Abridgment, Tit' Avowry, f. 644, 645, &c.*

C H A P. VI.

In what Cases a Tenant or other shall be said to commit Waste in Houses, Gardens, Woods, Pastures, Orchards, &c. and what Waste shall be punishable, and what not.

IT concernsevery Tenant, of what ^{Caution} Nature soever his Tenure be, to ^{against} be very careful herein : For he may ^{Waste.} in committing Waste soon become obnoxious to the Law, and incur great Damage.

I shall therefore by way of Caution shew you in what Cases a Tenant may commit Waste, so as to render himself liable to Loss and Punishment ; and then how far a Tenant may act upon his Tenure, and not commit any punishable Waste.

If a Tenant for Life or Years, or ^{Waste} in Dower, do pull down any of the Houses or Tenements, or suffer them to be uncovered, to the rotting or destroying of the Timber or

K s

Materials

Materials of the House, this is Waste. *Cook, 1 par. Instr. f. 53.*

Glass Windows.

So likewise if Glass-Windows be broken down or carried away, it is Waste, though the Tenant glazed them himself, for the Glass is Part of the House. It is also Waste to take away Wainscot, if it be fixed to the Walls or Posts of the House.

Doors.

It is likewise Waste to take away Doors or Windows, or any Thing annexed or fixed to the Freehold, although the Tenant fixed them there himself.

Building.

If a Tenant build a New House where none was before, it is Waste; and if he suffer it to be wasted, it is a new Waste.

Walls.

The pulling down of a Stone-Wall or Mud-Wall of a House, is Waste. *Cook. Ibid.*

Parks, &c.

If a Tenant of a Park, Warren, Dove-House or the like, do not leave such sufficient Store as he found when he entred, it is Waste; and so it is to suffer a Park-Pale to decay, whereby the Deer are lost or dispersed.

Selling Timber.

If a Tenant suffer the Houses to be wasted, and then sell Timber to repair them, this is a double Waste. *Co. 1 part. Instr. f. 53.*

Waste

Waste is properly in Houses, Gar- ^{Timber}
dens and Timber-Trees; that is, ^{Waste, &c.}
Oak, Ash and Elm, which are
counted Timber generally in all
Places; except in some Copyholds,
Elm is not.

Now these Timber-Trees are said
to be wasted either by cutting them
down, lopping or topping them, or
any otherwise decaying the Tim-
ber.

And in some Countries where
Timber is scarce, Beech is account-
ed Timber, or other Trees used for
building Houses; and there the cut-
ting of them is Waste. *Idem.*

Or if a Tenant suffer the young
Germens of Trees to be destroyed,
this is Destruction, and punishable
in Waste.

To cut down any Trees, as Wil- ^{Willows,}
lows, Birch, or the like, which ^{Birch, &c.}
stand and grow in the Defence and
within view of the dwelling House,
is Waste.

It is a Waste to cut down Hazels ^{Hazels,}
which grow not under the great
Trees, but in a Quarter of the Wood
by themselves.

If a Tenant grub up or destroy a
quick Fence of White Thorn, it is
Waste. *Coi. par. Inst. f. 53.*

Burning

*House burn-
ing.*

Burning of a House by Negligence or Mischance, was Waste. But is since made otherwise; yet if it, happen through the Negligence of a Servant, such Servant forfeits 100 l. or to be sent to a Work-House for 18 Months. See at the latter End of this Treatise.

Wood.

Where is a Wood, and nothing growing there but Underwood, the Tenant cannot cut all: But if it be a Wood where great Trees grow amongst the Underwood, there he may cut all the Underwood.

*Fruit-
Trees, &c.*

It is Waste to cut Apple-trees, if they bear Fruit, though they lie along the Ground.

It is also Waste to cut Damask-Trees, or any Fruit-Trees growing in a Garden or Orchard.

Digging.

To dig for Gravel, Chalk, Clay, Brick, Earth or Stones, or the like, is Waste; and so it is if a Tenant dig for any Mines which were not open at the Time of the Lease made.

*Sea-Bank,
&c.*

To suffer a Bank or Wall of the Sea to be in decay, so that by the Flux and Reflux of Sea the Marsh is overflown, so that it becomes unprofitable, is Waste.

But

But if the Sea break in suddenly by a violent Tempest, it is no Waste.

It is Waste also if a Tenant suffer the Banks of any River or Water to decay, whereby the Ground is surrounded, or becomes unprofitable ; so it is to suffer Pasture-Ground to be surrounded so as it become Rushy, or Arable-Land so that it becomes rough Clay.

It is Waste for any Tenant to convert Arable into Wood, or Meadow into Arable.

The Punishment in Waste is treble Damages, and Forfeiture of the Place wasted. *Punishments.*

There is Voluntary or Actual Waste, and Permissive Waste.

An Action of Waste lieth against a Tenant by the Courtesie, Tenant for Life or Years, half a Year, or Tenant in Dower, by him that hath the Estate of Inheritance, in any of all these Cases before-mentioned. *How the Action lieth.*

But Waste doth not lie against a Guardian in Socage, but an Action of Accompt or Trespass.

Neither doth Waste lie against a Tenant by *Elegit*, Statute Merchant or the Staple ; but an Action of Accompt after the Debt and Damages revied.

Waste

At Will.

Waste doth not lie against a Tenant at Will: But if such Tenant voluntarily pull down Houses, or cut down Timber-Trees or the like; in this Case the Lord may have an Action of Trespass against him. *Co. 1 part. Inst. 54.*

Mortgage.

But against a Tenant in Mortgage, either an Action of Waste or an Accompt will lie against him, because his Estate is Conditional. *Noy Max. p. 33.*

Joint-Tenants.

If two or more Joint-Tenants, or Tenants in Common, be in a House, and one will repair the House, and the other will not; in that Case, he that will repair it, may have a Writ *de Reparatione faciend.*

Repairs.

If a Landlord covenant to repair the House, and doth it not, in this Case the Lessee may cut Timber growing upon the Ground and repair it, though he be not compellable thereunto, and shall not be punishable in Waste for so doing.

Action by whom.

No Man can have an Action of Waste, unless he have the immediate Estate of Inheritance; but sometimes another shall join with him. *Cook; 1 part. Inst. p. 53.*

As if a Reversion be granted to Joinder.
two, and the Heirs of the one, they
two shall join in an Action of Waste.

In like Manner the Surviving Co-
partners, and the Tenant by the Cour-
tesie, shall join in an Action of Waste.

If a Tenant for Years commit
Waste and die, no Action of Waste
lieth against his Executors or Ad-
ministrators, for Waste done before
their Time.

If there be two Copartners of a Copartners.
Reversion, and one of them die, the
Aunt and Neece shall join in an A-
ction of Waste. *Kitch. f. 244.*

If a Tenant for Life commit Waste, Surrender.
and after surrender his Estate, and
the Lessor accepts it; the Lessee is
then discharged of the Waste.

If a Stranger commit Waste upon Stranger.
the Lands which one holdeth for Life
or Years, the Tenant shall suffer for
it, and is left to take his Remedy
over against him that did it.

If a Landlord covenant to deliver Delivery of
Timber out of the same Land to re- Timber.
pair the House let, and will not de-
liver it, and for Defect thereof the
Tenant will not repair it, but suf-
fers the House to fall down; this is
Waste in the Tenant, and he is pu-
nishable for it.

But

But if the Timber be to be taken out of the Lands, and be not delivered, then the Tenant is excusable if he suffer the House to fall, and no Action of Waste lies against him.

By Husband.

If a single Woman rent Lands and marries, and her Husband commits Waste and dies, she shall be punished for this Waste done by her Husband.
Idem.

But if a Lease be made to a Man and his Wife, and her Husband commits Waste and dies; in this Case the Wife shall not be punished for such Waste, unless she agree to the Estate:

Simile.

If a Woman be Tenant for her Life, and marries, and her Husband commit Waste, and the Wife dieth, the Man is not punishable for this Waste: But if a Woman be possessed of a Term of Years, and takes a Husband who commits Waste, and the Wife dies; here the Man is liable to an Action of Waste, for the Waste by him committed, because he enjoyeth the Term of the Lease.
Cook, 1 part. Inst. 54.

Reversion granted.

If a Man make a Lease for Life or Years, and after grants the Reversion for Years, the Lessor shall have no Action of Waste during the Years;
for

For he himself hath granted away the Reversion, in respect whereof he is to maintain his Action.

If an Action of Waste be brought, *Lease determined* and the Term end while it is depending, yet the Writ shall not abate: For although the Plaintiff cannot recover the Place wasted, yet he shall recover the treble Damages.

Likewise if one be Tenant for Cestui Term of another's Life, and makes *que vie* Waste, and afterwards the Cestui *que vie* dies, here the Lessor shall recover treble Damages, but cannot recover the Place wasted; for that falls to him by the Death of the Cestui *que vie*. *Co. 1. part. Inst. f. 285.*

If Waste be done in one Corner of *What re-* a Wood, that Place only which is *covered* wasted shall be recovered: But if it be done here and there about the Wood, then the whole Wood shall be recovered, or as much wherein the Waste *Sparfim* is done. *Co. 1. Inst. 54.*

And so in Houses, so many Rooms shall be recovered wherein there is Waste done. *Idem.*

If a Man make Waste in cutting *Hedge-* Trees which grow in Hedge-rows, *rows.* which enclose Pastures, nothing shall be recovered but the Place wasted; that is, the Circuit of the Roots, and
not

not the whole Pasture ; but if Trees grow scatteringly about the Pasture, then the whole Pasture is forfeited if they be cut. *Pract. Reg.* 654.

Pleas.

It is good Plea in Bar to a Writ of Waste, to say that the House fell by a sudden Tempest, although the Tenant did covenant to repair it, but it is no Plea in an Action of Covenant.

It is also a good Plea in a Writ of Waste, to say that the House was Ruinous at the Time of the Lease making, and the Timber so putrified and rotten that it fell.

It is also a good Plea, to say that the Plaintiff hath entred upon the Land, before which Entry no Waste was made ; or that he surrendered, and the Plaintiff did accept, before which Time no Waste was made.

Surrender.

If a Tenant doth Waste, and afterward surrenders, and the Lessor agrees ; yet the Lessor may have an Action of Waste, and recover treble Damages. *Cook, 1 part. Inst. f.* 285.

Abatement.

If an Action of Waste be brought by Husband and Wife in Remainder in Special Tail, and the Wife dieth (the Suit depending) without Issue ; in this Case, the Writ of Waste shall abate.

If a Lease be made to hold to one with-

without any Impeachment of Waste, *Without Impeachment.*
 then the Tenant may cut down Trees, and convert them to his own Use :
 But if the Words be to hold without Impeachment for any Action of Waste ; in this Case, if the Lessee cut down Trees, the Lessor shall have them. *Idem f. 220.*

If a Tenant for Life grant a Rent- *Rent- Charge.*
 Charge, and after doth Waste, and the Lessor recover in an Action of Waste, he shall hold the Land charged during the Life of the Tenant for Life ; but if the Rent were granted after the Waste done, the Lessor shall then avoid the grant made by the Lessee for Life. *Cook, 1 part. Inst. 233, 234.*

If a Tenant in Fee release to his *Release.*
 Tenant for Life all his Right, yet he shall have an Action of Waste. *Idem f. 345.*

And if a Tenant in Tail make a Lease for his own Life, yet he shall have an Action of Waste.

But if there be a Tenant for Life, the Remainder to another in Tail, and he in the Remainder release to the Tenant for Life all his Right and State in the Land ; he cannot afterwards have an Action for Waste.

If the Grantee of a Reversion *Plen.*
 bring an Action of Waste, the Lessee may

may plead generally, that he hath nothing in the Reversion.

Lessee.

If a Lessee before his Term begins enters into the Lands let to him, and do an Act which amounteth unto Waste, the Lessor shall not have an Action of Waste for the same.

None shall have Judgment to recover in an Action of Waste, where the Waste comes but to 12*d.* or such a small Sum.

Lessee.

If Waste be done upon Lands let for Term of Years or Life, by one against whom the Lessee can have no Remedy in Law for committing the same Waste, the Lessee in such Case is not punishable for the same by the Lessor, except there be a Special Covenant in the Lease, that he shall not permit nor suffer Waste to be done. *Cook, 2 part. Inst. f. 303.*

If the House be uncovered when the Tenant cometh in, it is no Waste to the Tenant, if he suffer it to fall down.

*Sudden
Tempest,
&c.*

The raising of a new Frame of a House which was never covered, is no Waste. If a House fall by sudden Tempest, or be burnt by Lightning, or destroyed by Enemies, or the like, without any Default of the Tenant, or was Ruinous at his coming in, and fall down; this is no Waste.

And

And the Tenant may build the same again with such Materials as remain, and with other Timber growing upon the Ground; but he must not make the House any larger then it was, for if he do, it is Waste. *Re-build- ing by Tenant.*

If a Tenant fix a Furnace, and not to the Walls nor Posts of the House, if he take it away within his Term, it is no Waste. *Furnace.*

If a Tenant in Fee fix a Furnace in the middle of the House, the Heir shall have it and not the Executors.

If a House fall by a great Wind or Tempest, the Lessor shall have the Timber, for it is no Waste, and the Lessee is not bound to build it up again.

Relief in Chancery for Waste. *Vide ante.*

Digging of Land by a particular Tenant is Waste. *Dyer 361. Lit. Digging Land. Rep. 295.*

But not if it be for bettering the Ground: Yet if a Copyholder build a new House upon part of the Land, it has been adjudged a Forfeiture; for though the Land is bettered, yet it is in another Kind. *Id. & 22 H. 6.*

A Lessee of Land made it a Hop-ground, and it was adjudged Waste. *Hop-ground. Litt. Rep. ibid.* Altho' one Acre now was

was better than Three before, but it was in another Kind.

Plea.

To pull down a House is Waste; but if the Tenant build it up again before an Action brought, he may plead that specially. *1 Mod. Rep.* 94.

To pull down a Malt-Mill, and build a Corn-Mill, it's Waste. *Idem. Co. Lit.* 53. *1 Roll.* 507. *2. Roll.* 815.

*Special
Plea.*

If a House could not be repaired without pulling it down, it must be pleaded specially. *1 Mod. Rep.* 94.

*What
Waste.*

Waste in the House is Waste in the Curtelage, and Waste in the Hall is Waste in the whole House. *Idem.*

To convert a Brewhouse into Tenements is Waste also, altho' they be of greater Value. *1 Lev.* 309.

*Action
when.*

As is observed before, if a Tenant make Waste in cutting of Wood or Timber contrary to the Proviso's Exceptions, or Covenants in his Lease; for such a Breach, the Landlord may bring his Action of Covenant before the end of the Term.

Forfeiture.

How Waste is a Forfeiture, but if a Copyhold by Custom hath been fined, or removed it, that proves that 'tis no Forfeiture; for where the Law gives the Lord another Recompence, the Law will not make a Forfeiture.

And

And a Lord may pursue a Copyholder with Amercements 'till he pluck up a Hedge. *Lit. Rep.* 267.

Some Observations concerning the Cutting, Spoiling and Stealing of Wood.

By the Stat. of 43 *Eliz.* and 15 *Car.* 2. *Cutting, stealing or spoiling of Woods, &c.*
 If any shall be convicted by his own Confession, or by the Testimony of one Witness upon Oath, before one Justice of Peace or Head Officer, to have unlawfully cut or taken away any Grain growing, robbed any Orchard or Garden, digged up or taken any Fruit-Trees, broken any Hedges, Pales or other Fences, cut or spoiled any Woods or Underwoods standing and growing, or the like, or to have been accessory thereunto; he shall, within such Time as the Justice or Head Officer shall appoint, pay for the first Offence to the Party grieved so much as the Justice or Head Officer shall set down: And in case the Party offending be not able to pay it, or do it not according to Order, then the Offender is by them or either of them (respectively) to be committed to the Constable, or other Officer of the Place where the Offence was com-

committed, or the Party apprehended to be whipped, and so for every Offence afterwards, and proved as aforesaid, the Offender is to have the like Punishment of Whipping.

If the Constable refuse or neglect to whip the Offender, any such Justice of the Peace or Head Officer may commit him to Prison without Bail, till he whip or cause to be whipped the Party offending, as above declared.

No Justice may execute this Statute for Offences done to himself unless he be associated with one or more Justices of Peace whom the Offence doth not concern : Statute 43 *Eliz. c. 7.*

By Stat.

15 *Car. 2.*

c. 2.

Every Constable, Headborough or other Person in every County, City, Town Corporate, or other Place where they shall be Officers or Inhabitants, shall have Power to apprehend, or cause to be apprehended, such as they suspect for having, or carrying, or any ways conveying any Burden or Bundles of any kind of Wood, Underwood, Poles, or young Trees, Bark or Buds of Trees, or any Gates, Styles, Posts, Pales, Rails or Hedgwood, Broom or Furz.

If any Person be suspected to have any such Woods, Underwoods, &c. any Officer by Warrant under the Hand and Seal of one Justice, may enter by vertue thereof into the Houses, Out-houses, Yards, Gardens, or other Places belonging to such Persons, and wheresoever they find any such, they may apprehend those Persons, and also those who are suspected to have cut and taken the same, and carry them before a Justice of the Peace of the County, City, &c. and if he in whose Custody such Wood, &c. is found, cannot give a satisfactory Answer and Proof to the Justice of his buying the same, he shall be deemed a Convict within the Statute 43 Eliz. Forfeiture for the first Offence as the Justice shall appoint, not exceeding ten Shillings, and Commitment to the House of Correction, or Whipping for not performing the Justices Order; for the second Offence, House of Correction, and hard Labour for one Month; for the third, to be deemed an incorrigible Rogue.

Buyers of such stolen Wood may be ordered to pay treble Value to the Owner, &c. to be levied by Distress and Sale; and for want of such Distress, commitment to Gaol without Bail for a Month.

Not to be punished twice for the same Offence, nor to be questioned by this Statute, unless within Six Weeks after the Offence committed.

CHAP.

The
C
wh
or t
mon
Past
C
Pisc
C
of
l. 4.
C
Estor
vers
A
Com
pend
3. C
or M
122.
N
berry
is, w

C H A P. VII.

The Doctrine concerning Common of Cattle, &c. between Landlord and Tenant.

Common signifieth in our Com- Common
 mon Law, that Soil or Water, what.
 whereof the Use is common to this
 or that Town or Lordship; as Com-
 mon of Pasture, (termed *Communia*
Pasturae;) *Bract. l. 4. c. 19 & 40.*

Common of Fishing, *Communia Piscariae*.
Piscariae. Id. l. 2. c. 34.

Common of Turbary for digging *Purbaria*.
 of Turves, *Communia Turbariae. Id.*
l. 4. c. 41.

Common of Estovers, *Communia Estoverio-*
Estoveriorum. Kitch. f. 94. See Estor-
rum. vers in Tabula.

Again, Common is divided into *Division*
 Common in Gross. 2. Common Ap- into 3.
 pendant, and Common Appurtenant.
 3. Common by reason of Vicinage
 or Neighbourhood. *Vide Co. Lit.*
122. a.

Now Common in Gross is a Li- Common
 berty to have Common alone, (that *in Gross.*
 is, without any Land or Tenement

in another Man's Land) to himself for Life, or to him and his Heirs, and it is commonly passed by Deed of Grant or Specialty. *Old. Nat. Brev. 31 & 37. Cowels Interp. verb. Common.*

2. *Common Appendant and Common Appurtenant.*

Difference into Common Appurtenant,

And Common Appendant.

Another Difference.

Mr. Cowel further says, That Common Appendant and Common Appurtenant are in a manner confounded, as appears by *Fitz. Nat. Brev. f. 180.* and are defined to be a Liberty of Common appertaining to, or depending of such or such a Freehold; yet *Kitchin, f. 94.* seems to make this Difference, That he which hath Common Appurtenant, hath it without Limitation of this or that kind of Beasts; but that this again is controlled by *Dyer, f. 70. b. Numb. 19.*

And that he who hath Common Appendant, hath it but for Beasts commonable, as Horses, Oxen, Kine, and Sheep, being accounted fittest for the Plowman, and not of Goats, Geese and Hogs. Whereunto the Author of the *New Terms of the Law* addeth another Difference, which is, That Common Appurtenant may be severed from the Land whereunto 'tis appurtenant, but not Common Appendant.

The

The Original of Common Appendant is expressed in 4 *Lib. Co. Rep. f. 37.* to this Purpose: *viz.* That when a Lord enfeoffed another in arable Lands to hold of him in Socage, as all tenure in the beginning (according to *Littleton*) was; The Feoffee, to maintain the Service of his Plow, had Common in the Waste of his Lord for his necessary Beasts to gain and compass his Land, and that for two Causes: One for that (as then it was taken) it was tacitly implied in the Feoffment, by reason the Feoffee could not gain or compass his Land without Cattle, and Cattle could not be sustained without Pasture, and so by consequence the Feoffee had, as a Thing necessary and incident, Common in the Wastes and Land of the Lord. The second Reason was, for Maintenance and Advancement of Tillage, which is much regarded and favoured in the Law.

Original of Common Appendant.

Two Causes.

Common for Cause. of Vicinage or Neighbourhood, is a Liberty that the Tenants of one Lord in one Town have to Common with the Tenants of another Lord in another Town: Which kind of Common, they that challenge may not

Common for Cause of Vicinage.

put their Cattle into the Common of the other Town, for then they are distreinable; but turning them into their own Fields, if they stray into their Neighbours Common, they must be suffered. See the *Terms of the Law*, and *Cow. Interp. verb. Common*.

Where either inclose.

That if there be Common by reason of Viscinage between two Manors Time out of Mind, &c. yet one may inclose against the other. *Co. Lit.* 122. 4 *Co.* 38. b. So it's said, if he incloses any Part of his Common, the Common *pur cause de Vicinage* is gone. But in such a Case, if the Lord of one Manor incloses, he shall not bind a Copyholder of the same Manor, but that he may have Common for Cause of Vicinage as he had before. *Mich. 3 Jac. in Banco, per Hubert.*

Privilege of a Copyholder.

Where there is Common for Cause of Vicinage between Two, yet one cannot put his Cattle into the Land of the other, but they ought to escape there of themselves by reason of the Vicinity, for this is but an Excuse of the Trespass. *Co. Lit.* 122.

The Cattle ought to escape therein, &c.

Whether a Prescription ought to be Causa Vicinagii.

It was said, That every Common for Cause of Vicinage, is a Common Appendant, and that a Man for such Reason need not prescribe; but

but that it is sufficient to say, That he and all those whose Estate, &c. have used to Intercommon *Causa Vicinagii*; but yet it's doubtful, and 13 H. 7. 13. b. there is a Prescription for Common *Causa Vicinagii*. And in *Poph. 201. dubitatur*, whether it was sufficient that he and all the Occupiers of, &c. have had, &c.

Resolved *per Cur'*.

That if there be Common for *Where one,*
Cause of Vicinage between the Towns *the Com-*
of *A.* and *B.* and *A.* hath fifty Acres *mons have*
of Common, and *B.* hath a Hundred *but 50*
Acres of Common, the Inhabitants *Acres, and*
of *A.* cannot put more Cattle into *the other*
their Common than the fifty Acres *100.*
will depasture, without any regard to the Common of *B.* for the Original Cause of this Common was not the Profit of either Town, but to prevent Suits in open Countries for reciprocal Escapes from one Field into the other. 7 Co. 5. b.

As for *Shack* in the Common of *Shack;*
Norfolk (which is a sort of Common for Cause of Vicinage) and the Commencement thereof, *Vide 7 Co. 5.*

Before we see farther into Common Appendant, &c. 'twill be convenient to enquire after the Common of the Lord.

For Common as Lord.

*For Com-
mon as
Lord.*

The Lord of the Manor seised of the Wastes in which the Tenant have Common, may, it's said, feed the Common by part or all of Common Right without Disturbance, 18 E. 3. 43. 18. *Aff.* 4. But whether the Lord by Prescription may be restrained to a certain Number, *Vide* 2 Roll. *Abr.* 267. Pl. 2.

*Upon a
Grant
sans Num-
ber.*

If the Owner of the Soil grants to another Common without Number there, yet the Grantee cannot use the Common with so many Cattle, that the Grantor shall not have sufficient Common for his Cattle. 12 H. 8. 2. *Bridg.* 5. 1 Roll. *Rep.* 365. 1 *Saund.* 345. Co. *Lit.* 122. a. 1 Roll. *Abr.* 399. Pl. 5.

*Upon Claim
by Prescrip-
tion.*

So where a Man claims Common without Number by Prescription or Custom, for it is against the nature of the Word Common to exclude the Owner of the Soil; and it was implied in the first Grant, That the Owner of the Soil should take his reasonable Profit there. Co. *Lit.* 122. 2 Roll. *Abr.* 267. Letter L.

*Where
Lord may
distrain.*

And tho' per F. N. B. 125. D. Common without Number is not admeasurable;

surable; yet if the Commoner surcharges it, the Lord may distrein.

Vide 1 Saund. 345.

The Lord by Prescription may a-^{May agift} gift the Cattle of a Stranger in the Cattle. Common, but without Prescription he cannot. 30 E. 3. 27.

He may license a Stranger to put ^{May license} in his Cattle, if he leaves sufficient ^{a Strangers} Common for the Commoners: 2 Mod.

6, 7, 275.

And if A. grants Common to B. ^{May not} in a certain Place, A. cannot after-^{defeat his} wards erect a Rick there; for by the ^{own Grants} Grant the Cattle of B. are to range over the whole Place without restraint, and it shall not be in the Power of A. to defeat his own Grant. *Cro. Jac. 271, 272. int' Farmer and Hunt. Vide Yelv. 201, 202.*

If the Lord alien in Fee the Soil ^{if he alien} where the Common is to be taken, ^{Fee} saving his Power of feeding as Lord, ^{saving} he shall have Common there as Lord. &c. 18 E. 3. 43.

And if the Lord, without any fa- ^{if he alien} ving, aliens the Soil where the Com- ^{without a} mon is to be taken, his Common ^{saving} as Lord is gone by the Feoffement; ^{&c.} but the alien of the Soil may feed it as the Lord might have done before:

L s.

For

For that this Common is given, because it is in his Soil where the Lord has it, and not because he is Lord. *ibid.*

Of Common Appendant.

That Common Appendant is of Common Right. 26 H. 4.

Appendant Time out of Mind. That 'tis not Common Appendant, unless it has been Appendant Time out of Mind. 40 Ed. 3. 10. b. *Kelw.* 129. b. *Bro. Com.* 16. 5. *Aff.* 2. For such Common cannot be created at this Day. 5 *Aff.* 9. *Fitz Affize* 134. 26 H. 8. 4.

All the Year saving, &c. That Common Appendant may be through all the Year, saving a certain Time, at what Time the Lord feeds it. 27 E. 3. 86. b.

Limited upon Condition. Also it seems, that Common Appendant may be limited upon Condition. 37 H. 6. 34. *Fitz Tresp.* 85. *Br. Common* 13.

Unlimited, &c. That Common Appendant may be unlimited; so *quam diu* he pays so much; so *tam diu* as he shall be living upon such a House to which the Common is Appendant. *Ibid.* *ut supra.*

So Common Appendant may be ^{After Corn} severed, ^{till,} &c. to Common after the Corn is severed 'till it is re-sowed, 37 H. 6.

34. And if part only is re-sowed, he may Common in the Residue. *Yelu.* 185. 2 *Brownl.* 189. *Br. Common* 13.

So it may be Common in the ^{After Hay} Meadow after the Hay carried 'till ^{carried, till,} &c. *Candlemas*, 17 *Elix.* 3. 26. b. 34.

So it may be to Common in the Pasture from the Feast of St. *Augustin* and *All-Saints*, &c. *Ibid.*

So it may be to Common two ^{For two} Years after the Corn cut and car- ^{Years af-} ried away 'till it is re-sowed, and ^{ter, &c.} every third Year *per totum Annum*, ^{Until, &c.} 22 *Aff.* 42. *Vide* 1 *Saund.* 343, 344.

That a Man may have Common ^{In two} Appendant for thirty Cattle in one ^{Places.} Place, and to the same Land Common Appendant also in another Place for part of the said Cattle, and so may take it where he pleases. 17 *Ed.* 3. 34. b.

That a Man may prescribe for ^{Until Land} Common in certain Lands from the ^{re-sowed} Time the Corn is severed, until the ^{by Consens} Land shall be sowed again by the Assent of the Commoners; for by the Law the Owner cannot plough where another hath Common. 1 *Leon.*

73. *int' Hawks* and *Molineux*.

So

For 1700
Geldings
in 1000
Acres.

So a Man may prescribe for Pastu-
age for two Geldings in a Thousand
Acres of Meadow, from the first
Day of *May* 'till the Grass be there
cut and made into Hay; for being
in so great quantity of Land, the go-
ing of two Geldings there cannot so
defoul or debruse it, but that Hay
may well be made thereof. *Cra.*
Fac. 27. int' Sir John Thomas and Laf-
sels.

What it
may be Ap-
pendant.

It ought to be Appendant to ara-
ble Land, but not to other Land
which is arable, nor to a House:
Neither can it be Appendant to Land
which is approved within Time of
Memory out of the Waste of the
Lord: Neither can Common of
Turbary be Appendant to Land.
26 H. 8. 4. 5 Aff. 2. 9. Br. Com. 13.
16. Fitz Affize 134.

For what
Cattle.

Also it ought to be for such Cattle
as plough his Land (to which it is
Appendant as it seems) and compester
it, *viz.* Horses and Oxen to plough
the Land, and Cows and Sheep to
compester it. *37 H. 6. 34. Br. Com.*
13. Co. Lit. 122.

What not.

But he may not use it with Goats,
Geese, or such like, for these are
not necessary to do *ut supra.* *37 H. 6.*
34. Br. Com. 13.

And

And therefore a Prescription to have Common Appendant for all manner of Cattle is not good, because it comprehends Goats, Geese, and such like ; but this is Common Appurtenant. 37 H. 6. 34. Br. Com. 13, 14. 1 Roll. Abr. 401. pl. 2. Not for all manner of Cattle.

Again, the Common is admeasureable, according to the Quality and Quantity of the Freehold, to which he claims to have this Common Appendant. 37 H. 6. 34. Br. Com. 13. Common admeasureable.
Vide postea concerning Admeasurement.

Viz. For all those which are levant and couchant upon the Land, 15 Ed. 4. 32. b. 11 H. 8. 12. Br. Com. 8. And per Noy 30. *dubitatur*, what Cattle shall be levant and couchant ; but there said, That the Chief Justice in the Circuit held for so many Cattle as the Land to which, (&c.) may maintain in the Winter, shall be said levant and couchant. *Vide* 1 Vent. 54. And that so many Beasts may be said Levant and Couchant upon a House as may be tied there, and are usually to be maintained in the House. 2 Brownl. 101. But per Vaugh. 253. in a common Intent, Cattle cannot be levant upon a Messuage only. For how many Cattle. Levant and Couchant. What shall be said Levant and Couchant.

That

By Inhabitant of a Town.

That he who claims Common by force of a Prescription, as an Inhabitant of a Town, shall have no other Cattle to Common there, but what are levant and couchant within the same Town, 15 E. 4. 32. b. Br. Com. 8. for there is no Diversity between this and Common Appendant. See after.

May be limited.

That Common Appendant may by Usage be limited to any certain Number of Cattle. 17 E. 3. 27. 34. b.

By whose Cattle.

Generally the Commoner cannot use the Common but with his own proper Cattle, 11 H. 6. 22. b. Fitz. Com. 3. Br. 47. 22 Aff. 84. Br. Com. 40. Fitz. Affise 228.

By borrowed Cattle.

If the Commoner hath not any Cattle to manure the Land, he may borrow other Cattle to manure it, and may use the Common with them, for by the Loan they are in a manner made his own Cattle. 45 E. 3. 26. 11 H. 6. 22. b. 14 H. 6. 6. b. 22 Aff. 84. Br. Com. 5. 14. 406. Br. Seisin. 5. Fitz. Com. 3. 47. Fitz. Tresf. 33. Fitz. Aff. 228.

May not agist, &c.

He cannot agist the Cattle of a Stranger, 11 H. 6. 22. a. 11. b. 22 Aff. 84. Fitz. Com. 3. Br. 40. 47. Fitz. Aff. 228,

If he takes the Cattle of a Stranger to fold, and folds them accordingly, being levant and couchant upon the Land, he may use the Common with these Cattle, for he has a special Property in them for the Time. *Mich. 10 Car. B. R. int' Jason and Hellyard, per Cur.*

Where Common is grantable over or not. *Vide 2 Roll. Abr. 46. pl. 15, 16.*

If a Man as Inhabitant of a Town, claims Common for all manner of Cattle in a Place, and claims the Common by reason he is an Inhabitant there, he shall have no other Beasts to Common there but those that are levant and couchant: And if a Man grants *sans* Number, the Grantee cannot put in so many Cattle, but so that the Grantor may have sufficient Common in the same Land. *12 H. 8. 2. 15 E. 4. 32. b.*

That a Man may prescribe to have Common for all manner of Cattle by reason of his Person. *15 E. 4. 33. Br. Com. 8. Vide 1 Roll. 396, 398. Br. Com. 48.*

But if a Man claims Common by Prescription for all manner of commonable Cattle in the Land of another, as belonging to a Tenement, this it's said is a void Prescription, because he does not say it is for Cattle levant

Strangers
Cattle taken to fold.

Grantable
over.

Upon Claim
as an Inhabitant.

Grant sans
Number.

By reason
of a Man's
Person.

Void, not
saying. Levant and
Couchant.

*Upon Com-
mon sans
Number.*

*What shall
be so in-
tended.*

*Helped af-
ter Ver-
dict.*

*Needs not
say Levant
and Cou-
chant.*

*In Gross by
a Corpora-
tion.*

levant and couchant, upon the Land to which he claims it to be Appurtenant, for a Man cannot have Common *sans* Number appurtenant to Land; and when he claims the Common for all Cattle commonable, and does not say for Cattle levant and couchant upon the Tenement, this shall be intended Common *sans* Number according to the Words, for there is not any Thing to limit it, when he does not say for Levant and Couchant; adjudged in Error, *int' Cobham and White, M. 14 Car. Rot. 403, 404.*

Said to be naught upon a general Demurrer, but that it is helped after Verdict. *Int' Cheadle and Miller. Vide 1 Lev. 196. 1 Saund. 227. 346. 1 Vent. 164, 165. 1 Mod. 6. 7. 75. 3 Mod. 162. Co. Ent. 656. Cro. Jac. 44.*

But if a Man prescribes for Common for a certain Number of Cattle, as belonging to certain Land, he need not say Levant and Couchant. *2 Mod. 185. See the Diversity adjudged, and 1 Roll. Abr. 401. pl. 4. 1 Vent. 163. 1 Mod. 75. Cro. Jac. 27.*

It is doubted whether a Corporation may prescribe, That every Burgees of the said Corporation hath Time out of Mind had Common

in

Gross sans Number in a certain place for all their Cattle, int' Miller and Spateman. 1 Saund. 345, 346. and that the Chief Justice positively said, There could be no Common Gross sans Number. *Vide 1 Mod. 7. dubitatur.* Nor sans Number.

But 2 Jon. 115. 2 Lev. 246. in an action between the same Parties for Disturbance in the Usage of the Common, it seems to have been adjudged a good Prescription. *Vide Hard. 118.* Yet *vide Co. Lit. 122.* this is one of the Commons there enumerated: And 3 Mod. 290. *arguendo* admitted, but said, The Prescription must not be laid to be *ad arbitrium suum.* Et *vide March. 83.* How the Prescription ought to be.

Prescription for a Common *omni tempore anni* in a Forreſt, &c. and it was not found to be a Forreſt. *Hard.*

7. If in Bar to an Avowry for Damage feasant, the Defendant prescribes for the Common in the Place where, &c. *pro omnibus equis, &c.* and so justifies the putting in his Gelding there. This is a good Plea, for *Equis* is a general Name, and comprehends Geldings as well as Horses, and Geldings in common Speech are called Horses, but for Mares it is Pro omnibus Equis, good for Geldings.

is not so; adjudged, *Cro. Eliz.* 798
int. Stapleton and Morfe.

*Common
claimed by
the Name
of Pastu-
rage.*

If in Bar of an Action of Trespass the Defendant pleads, that he, and all those whose Estate he hath in the Manor of *A.* have Time out of Mind had Pasturage for two Geldings in the Place where, and so justifies, this is a good Plea; for such Common may be claimed by the Name of Pasturage; adjudged, *Cro. Eliz.* 27. *inter Sir John Thornhill and Lassels.*

*Prescrip-
tion for Com-
mon pro
Magnis
Averiiis.*

If a Man in Bar to an Avowry for Damage feasant prescribes, That he, and all those whose, &c. have had Common *pro Magnis Averiiis* (for great Beasts) in the Place where &c. and so justifies his putting in the Geldings to use the Common, this is a good Plea: For *Magna Averia* may well be intended Horses, Oxen, Kine, or such other Beasts of these Kind which are Commonable, and by the common Phrase of People are well known among them, and there needs no Averment that the Gelding was one of the *Magna Averia*; adjudged, *Cro. Jac.* 580. *int. Standred and Shoreditch.*

But whether a Man may prescribe *Magna*
 or Common *pro Magnis Averis*, viz. *Averia*,
pro Bidentibus, &c. 1 Saund. 227. du-
what.
 titatur. And the Chief Justice said,
 Sheep were great Beasts in respect of
 Conies, &c.

Vide 2 Roll. Rep. 173. where the *Sheep and*
 Case of Standred is adjudged, and *Yearlings.*
 here said, That all manner of Cat-
 tle, except Sheep and Yearlings,
 should be called *Magna Averia*.

If a Man hath Time out of Mind *Common*
 and Common of Estovers in a cer- *Appurte-*
 tain Place to be burnt in such a *nant of E-*
 House, and to mend the old Houses *stovers.*
 and old Hedges; this is not Com-
 mon Appendant, but Appurtenant.
 11 H. 6. 11. b.

And if a Man and his Ancestors, *As appur-*
 and all those whose Estate he hath *tenant to a*
 in a House, have had Common for *House.*
 two Beasts in a certain Place; this
 also is not Appendant, but Appurte-
 nant. 11 H. 6. 12.

Upon a Grant of Common by a *Grant by*
 Deed of Bargain and Sale of *Deed, how*
 Black- *Appurte-*
 acre, which Deed is afterwards in- *nant by*
 roll'd; this was held a good Com- *Reference,*
 mon Appurtenant to B. altho' the *&c. to an*
 Grantee had nothing in the Land *after Act.*
 at the Time of the Grant; and tho'
 it shall not relate to settle the Estate
 in

in him *ab initio*, in as much as this has Reference to the Bargain and Sale, and to the Estate which he had by Force thereof. *Mich. 15 Jac. B. R. inter Gawen and Stacy.*

To an after Purchase. And so it is where the Grant of Common had Reference to that which a Man should afterwards purchase; for it is not necessary that he should have the Land at the time of the Grant. *Ibid.*

To the Inrollment of a Deed. So if a Man bargains and sells *Blackacre* to *B.* and after before the Deed is inroll'd, by another Deed grants a Common to the said *B.* for all the Cattle which should manure and eat the said *Blackacre*, and after the Deed is inroll'd, this shall be a good Common Appurtenant to the said *Blackacre*; and the Court said it should be so without any help of Relation. *Int' easdem Partes ut supra.*

To a contingent Estate. So where a Man grants to *B.* Common for all his Cattle which manure *Blackacre*, and after he purchases it; this was said to be a good Common Appurtenant to this *Acre* upon a Contingent, tho' he had nothing in it at the Time, &c. *int' easdem Partes ut supra*; but here is made a *Quere*, in as much as the Grant had no Reference to a future Purchase

chafe. Vide 1 Roll. Abr. 400. pl.

6.

A. seised in Fee of a Waste called *To Land in*
Heath, granted to the Prior of S. *another*
and his Tenants in S. Common in *Place.*

U. præd', *Habend'* to them and their
successors as Tenants in Fee, and
this was said to be Common Appur-
tenant to the said Land which the
Prior had in S. aforesaid, for that it
could not be a Common *sans* Num-
ber, but referred to the Land, *int'*
eachverell and *Porter*, 1 Roll. Abr.
400. pl. 7. Cro. Car. 482. 1 Jones 297.
Adjudged upon a special Verdict.

One granted to another a certain *Common in*
Assert with Common of Turbury, *Gross.*

as belonged to two Hides of Land
with the Appurtenances in D. and
this was said to be a Common in
Gross, being a Grant *de Novo*, not *Grant de*
by Prescription, and not appurte- *Novo.*
tenant to the said Assert; adjudged,

5 Aff. 9. Fitz Affize 134.

If A. as Appurtenant to a certain *Common*
Messuage, and twenty Acres of Land, *extinguish-*
hath Common in the Land of B. *ed and re-*
and after B. enfeoffs A. of the said *vived.*

Lands, in which, &c. by which the
Common is extinguished. And af-
ter A. leases to B. the said Messuage
and twenty Acres of Land, with all
Commons,

Commons, Profits and Commodities thereunto appertaining, or occupied or used with the said Messuages. This is said to be a good Grant of a New Common for the Time. *Trin. 39 Eliz. int' Bradshaw and Eyer. Cro. Eliz. 570.*

*Avowment
of User.*

But because it was not there averred, that this Common was there with used at the Time of the Lease, it was adjudged against the Defendant who claimed the Common.

*So of a
Copyhold
that Es-
cheats.*

So if a Copyhold Messuage escheats, to which before Common in the Demesne of the Lord did belong, and the Lord by Deed grants it by the Name of a Messuage, &c. and of whatsoever Common to the said Messuage belonging, &c. or with the same used. *2 And. 168. Cro. Eliz. 794.*

*Wood not
appurte-
nant to sell.*

If a Man prescribes to have Common of Estovers to his Freehold, *scilicet* a House, he cannot prescribe to sell the Wood, for this cannot be Appurtenant. *11 H. 6. 11. b. Vide Noy 145.* but must shew they are to be burnt or spent in the House. *1 Syd. 354.* but he may prescribe to build new Houses. *Cro Jac. 25.*

So a Man may prescribe to have *But to*
 as much Turf Yearly as two Men *burn, &c.*
 can dig in one Day. 1 *Lev.* 231.

A Man may prescribe to have *Common*
 Common Appurtenant to a Manor *Appurte-*
 for all manner of Cattle, 14 *H. 6.* *nant to a*
Manor.

b. and it is noted to be there said

Common Appendant, which cannot

be, *Vide* 1 *Roll. Abr.* 401. *Let. M. pl.* 2.

11z Tresf. 33. *Br. Com.* 14.

So a Man may prescribe to have *So to a*
 Common Appurtenant to his Free- *Freehold.*

hold for all manner of Cattle. 20 *Aff.*

Br. Com. 41.

A Man may prescribe, that he *To a Fold-*
 and all those whose Estate he hath *Course for*
 in the Manor of *D.* have used to have *300 Sheep.*

Fold-Course, *scil.* Common of Pa-

sture for Sheep not exceeding three

Hundred, in a Field, *scil.* C. Field

is Appurtenant to the said Manor;

no' he does not prescribe to have

them Levant and Couchant upon the *Levant and*

said Manor, there being a certain *Couchant.*

Number limited. *Mich.* 11 *Car. B. R.*

at Day and Spooner. *Vide ante* for

how many Cattle. *Jrr. Mich.* 6 *Car.*

10t. 183.

That a Man may prescribe to *For Hogs,*
 have Common Appurtenant for his *Goats, &c.*

Cattle not Commonable; as Hogs,

Goats, and such like. *Co. Lit.* 122.

That

*At every
Season.*

That a Man may prescribe to have Common Appurtenant to his Freehold for all manner of Cattle at every Season of the Year; adjudged, 25 *Aff.* 8. *Br. Com.* 41.

*For Hogs
Levant,
&c.*

That a Man may prescribe to have Common Appurtenant for Hogs Levant and Couchant upon such Land. *Mich.* 5 *Fac. per Cur.*

How Common Appurtenant may be used.

*How he
may not
agist.*

He that hath Common Appurtenant cannot agist the Cattle of a Stranger. 13 *Ed.* 3. 37.

*May bor-
row Sheep.*

But he may borrow Sheep of another to compester his Land, and with these he may use the Common. 14 *H. 6.*

*With what
Cattle.*

Fitz. Tresp. 33. *Br. Com.* 14.
That a Man may use a Common Appurtenant to his Manor with Cattle that are for his Household. *Ibid.*
vide 1 *Roll. Abr.* 401. *Let. N. pl.* 2. 3.
Br. Com. 14.

What not.

But he cannot use the Common with Cattle that are to sell. *Ibid.*

Of Common in Grofs.

*Not from
Common
Appendant.*

Common Appendant cannot be made Common in Grofs, for this is for Cattle Levant upon the Land, to which

which, &c. and therefore it cannot be severed without Extinguishment.

9 E. 4. 39. 26 Hen 8. 3. Cro. Car. 542.

That it may not by Grant be severed from the Soil. *No Severance.*

So Common Appurtenant for Cattle Levant and Couchant upon the Land, cannot be made in Gross for the aforesaid Cause. *Not from Common Appurtenant.* Nevil 384.

19 H. 6. 33. 6 Br. Com. 33. But that Common Appurtenant for a certain Number of Beasts, may be granted over. *May be granted over.* Cro. Jac. 15. per Cur. adjudged that it could not by Grant be severed from the Land, because he had it only *sub modo*, viz. for Beasts Levant, &c.

If A. and all those whose Estates he hath in the Manor of D. have had Time out of Mind a Fold-Course, scil. Common of Pasture, for any Number of Sheep not exceeding 300, in a certain Field, as appurtenant to the said Manor; he may grant over this Fold-Course to another, and so make it in Gross, because the Common is for a certain Number; and by the Prescription, the Sheep are not to be Levant and Couchant upon the Manor: But it is a Common for so many Sheep appurtenant to the Manor, which may be severed from

M from

Which
may be se-
vered.

from the Manor as well as an Advowson, without any Prejudice to the Owner of the Land where the Common is to be taken. *Mich. 11 Car. B. R. int. Day & Spooner. Cro. Car. 432. 1 Jon. 375. 1 Rol. Abr. 432. pl. 4. intr. Mich. 6. Car. Rot. 183.*

May be
granted
over with
a Parcel.

But there the Case was, whether it might be granted over with Parcel of the Manor, and so should be appurtenant to this Parcel; and it is adjudged in *Banco*, that it should pass as appurtenant to this Parcel, and so held *per Cur.* in *B. R.*

For what
Cattle.

That a Man may prescribe to have for all manner of Cattle, 15 *E. 4.* 33.

Not of a
Stranger.

The Grantee of Common for a certain Number of Cattle, cannot Common with the Cattle of a Stranger. 18 *E. 4.* 14. *b.*

Upon the
Lord's Li-
cence.

If a Lord licenses a Stranger to put his Cattle into the Common, this shall be intended of Commonable Cattle only, and not of Hogs. 2 *Mod. 7.* but if the Licence be for a particular Time, 'tis otherwise. *Ibid.* If in an Action of Trespass brought by a Commoner against a Stranger for putting his Cattle into the Common, whereby he could not have Common in so large a manner; and the

the Defendant pleads a Licence from the Lord to put his Cattle there, but does not aver, there is sufficient Common left for the Commoners. *In pleading, a Licence must aver Sufficient left.*

This is no good Plea ; though it may be objected, the Plaintiff may reply thereto, yet being the very Gift of the Action, the Defendant should have pleaded thereto : Adjudged *int.*

Smith & Feverel. 2 Mod. 6.

But in Action against the Lord, the Plaintiff must particularly shew the Surcharge. *Must shew the Surcharge.*

If a Commoner have no Cattle, he cannot agist the Cattle of others to use the Common, 45 E. 3. 25. b. Br. *By whose Cattle.* Com. 5. Br. Seisin 5. 22 Aff. 84. Br. Com. 40. Fitz. Aff. 228.

So he cannot command his Tenants at Will, to use it with their Cattle in his Name. *Not of Tenants at Will.* *Ibid. ut supra.*

But if he borrow other Cattle to manure his Land, he may use the Common with them, for they are in a manner his Cattle by borrowing ; and the Cattle which manure the Land, of Right ought to have Common. 45 E. 3. 25. b. 22 Aff. 84, &c. *By borrowed Cattle.* *ut supra.*

If a Man at all Times hath used Common with his Cattle Couchant and Levant in certain Places, and *Appendant and not Gross.*

not with other Cattle coming ; this is Common Appendant to this Place, and not in Gros. 22 *Aff.* 36. 13 *Co.* 66. *Br. Com.* 23.

*What shall
be a good
Grant.*

If a Man grant Common to another for Years, and do not declare in what Place he shall have it, this is void, 9. *H.* 6. 36. *Br. Grant.* 5.

*Ubicunq;
Averia
sua ierint.*

If a Man grants to another Common *ubicunque Averia sua ierint* (wheresoever his Cattle went) ; this is a good Grant by Averment, in what Place his Cattle fed at that Time of the Grant, before or after, 9 *H.* 6. 36. *Br. Grant.* 5. *Fitz.* *Com.* 2. *Br. Com.* 3. But without such Averment, this is no good Grant, 9 *H.* 6. 36.

*Benefit by
Averment.*

*Where no
Benefit by
the Grant.*

Again, if a Man make such a Grant as above, yet if the Cattle of the Grantor did never feed in any Place before the Grant, or at the Time of the Grant or after, the Grantee shall have no Benefit of the Grant. *Ibid Br. Com.* 5.

*Upon a fu-
ture Occu-
pation by
the Gran-
tor.*

But if he grants Common in that manner, and after he occupies and manures 100 Acres of Land with his Cattle, and after he becomes so poor, that he hath no Cattle ; yet the Grantee shall have the Common in the 100 Acres. *Ibid.*

So upon such a Grant, if the Grantor at the Time of the Grant or after, feeds his Cattle in any Place, the Grantee may common there also. 9 H. 6. 36. So at or after the Grant.
In any Place.

So upon such Grant of Common, *ubicunque Aueria* of the Grantor *ierint*, if the Grantor puts his Cattle in his Garden or in his Corn, the Grantee may put his Cattle there also. *Ibid.* So Ubi-
cunq;
Aueria
ierint.

But if there be such a Grant, and the Grantee dies, 'tis made a *Quære*, If the Grantee shall have Common after his Death? *Ibid.* Quære if
the Gran-
tee dies.

And if a Man grants Common to another, for all his Cattle throughout his Manor, yet he cannot common in the Garden of the Grantors Parcel of the Manor, but only in such Places where a Man of common Right ought to common. *Ibid.* Of Common
throughout
the Manor.
Br. Com. 5.

But upon such Grant, he may Common in any reasonable Part of the Manor, though not Waste or Common before, 'adjudged *Cro. Car.* 599. For by the Grant, there is no Restraint to the Waste or Commons.

Again, if a Man grant Common to another, *quandocunque Aueria sua ierint* (whensoever his Cattle should go), the Grantee shall not have Quando-
cunq; A-
ueria sua
ierint.

How intended, &c.

Common, but when the Cattle of the Grantee are in the Common. 9 H. 6. 36. Fitz. Com. 2. Br. 3. Br. Grant. 5. Hob. 40. cited and agreed. Cro. Car. 599. but objected, that the Clause, *Quandocunq; &c.* is void, because it restrains all the Effect of the Grant. Resp. *è contra*, for *Modus & Conventio, &c.* And it is not intendable, the Grantor will forbear to put in his own Cattle to defraud the Grantee of his Common. Vide 1 Rep. 87.

Where it may be at the Grantor's Will.

If one grants Common to another in his Land, every Year that it lies fresh; this is good, though it be at my Will, whether he shall have any Profits, for I may sow it. 17 E. 3. 34. b.

Where the Intention and Limitation must be observed.

And if A. grants Common to B. in certain Land for all his Cattle, which shall be Levant and Couchant upon *Black-Acre*, where B. hath nothing in *Black-Acre*, so that it cannot be appurtenant; yet this shall not be a Common in Gross, because the Intention and Limitation of the Grant is to Cattle Levant and Couchant: Agreed *int. Garwen & Stacy. Trin. 15 Jac. B. R.*

That

That a Man may grant to another, Common in a Place for all manner of Cattle, and in another Place for 10 Beasts; and so the Grantee may put the 10 Beasts in either of the two Places. 17 E. 3. 34. b. Upon a Grant in two several Places.

Seisin of Common, how obtained, &c.

A Tortious User of Common cannot put one in Seisin. 45 E. 3. 25. b. No by a Tortious User.
Br. Com. 5. Br. Seisin. 5. 22 Affs. 84.
Br. Com. 40. Br. Seisin, 36. Fitz. Affs. 228.

As a Commoner cannot get Seisin by Cattle which he agifts, for such User is not lawful; so he cannot gain Seisin by the User of his Tenants at Will, being his Servants with their Cattle, by his Command, in his Name, for their User with their Cattle is Tortious. *Ibid. ut supra.* Not by Tenants at Will.

But if the Commoner hath no Cattle, and so takes the Cattle of another, and the Tertenant delivers Seisin to the Commoner, and is present when the Cattle are put in, and he assents to the User & putting in, or commands him so to do; this is a good Seisin. 45 E. 6. 26. 22 Aff. 84. Br. Seisin 36. Seisin delivered by the Tertenant.

*By the Cat-
tle of ano-
ther how.*

So if the Commoner hath no Cat-
tle, he may take Seisin by the Cat-
tle of another, and chase them back
presently ; for the Continuance is
Tortious, and this is said to be a good
Seisin. 45 E. 3. 26. *Br. Seisin*. 5. *Br.*
Com. 5. But *Bro. Commoner* 51. 'tis
made a *Quære*, and this seems not to
be Law, for the putting them in
without continuance, is *Tortious*.
22 *Aff.* 24. *Br. Com.* 40. *Br. Seisin* 36.
Fitz. 228.

*Upon Com-
mon sans
Number.*

If a Man hath Common *sans*
Number, if he hath been seized of
this with Cattle, without any certain
Number, as 20, 30 or 40 ; this is
said to be a good Seisin. 11 H. 6. 23.

*Delivered
by the She-
riff by Pa-
rol.*

That if a Man recovers a Com-
mon, and the Sheriff upon a Writ
of Seisin comes to the Place, and by
Parol delivers to him Seisin of the
Common ; this is a good Seisin of
Common to have an *Affise*. 22 *Aff.*
84. *Bro. Seisin* 36. *Fitz. Affise* 228.

*Upon Seisin
of the Fa-
ther.*

Where the Seisin of the Father is
not sufficient for the Heir. 45 E. 3.
25. *Br. Seisin* 5. 22 *Aff.* 84. *Br. Sei-*
sin 36. *Fitz. Affise* 228.

*Upon Seisin
of a Lessee
for Years.*

But the Seisin of Lessee for Years
of a Common, is sufficient for him
in Reversion. 45 E. 3. 26. 22 *Aff.* 84.
Fitz. Aff. 228. *Br. Seisin* 36.

What

What Things a Commoner may do.

For the Interest and Power of a General Commoner, and the general Learning thereof: *Vide* Bridg. 10, 11. *Learning thereof.*
Godb. 123, 124. 2 *Leon* 201, 202.

Where he may make one or more Gaps to put in his Cattle, if the Common be enclosed. *Vide* *Gouls.* 117. *May make Gaps.*
Lit. Rep. 38. 2 *Inst.* 88.

May throw down the Hedges. *Throw down Hedges.*
 2 *Mod.* 65, 66. 1 *Brownl.* 228.
 If the Lord makes a Pond in the Common, the Commoners may let the Water out. 1 *Brownl.* 288. *Let out Water.*

If the Lord of a Common makes Cony-Burrows in the Common, and stores them with Conies though he hath no Warren, yet the Commoners cannot justify the killing the Conies, that they may not increase to the Prejudice of the Common. *Upon the Lords making Cony-Burrows.*
Adjudged int. Hodson & Griffell. Mich.
 5 *Fac. B. R.* *Vide* *Godb.* 123, 124. *May not kill them.*
 2 *Bul.* 116. *Yelv.* 105. *Cro. Eliz.* 876.
Cro. Fac. 229, 230. 1 *Brownl.* 227.
 2 *Leon.* 201. 4 *Leon.* 7.

Again, if the Lord of a Common makes Cony-Burrows in the Common, and stores them with Conies, by which the Commoners cannot
But may bring their Affise or Action.
 M 5 have

have sufficient Common; yet the Commoners cannot justify the Killing the Conies, but ought to bring their Affise or Action against the Lord, for they cannot be their own Judges. *Sed Dubitatur*: So *Bridgman*, 9, 10, 11. *Dubitatur*, Whether a Commoner may prescribe to kill the Conies, so often as the Common hath been oppressed. *Vide Cro. Jac.* 195. & *Yelv.* 104, 105. Where the Case, of not Killing is said to be adjudged. so *Godb.* 123. *Cony's Case*. So 2 *Leon* 201, 202. & 4 *Leon* 7. adjudged, though it should be admitted the Commoner hath no other Remedy, *Cro. Jac.* 229, 230.

Dubita-
tur.

May not;
though no
other Re-
medy.

But Action
against the
Lord.

But it seems, every one of the Copyhold Commoners, by Prescription in the Wastes of the Lord, (if the Lord stores the Waste with Conies,) may have an Action of Case against the Lord, averring that by this his Common is impaired. 1 *Rel. Abr.* 106, *Pl.* 19. 405. *Pl.* 2.

Though the
King
granted
him Free
Warren.

And that an Action lies, notwithstanding the King grants to the Lord a Free Warren there. 1 *Jon.* 12. *Winch.* 16. *Palm.* 319. And accordingly, *Yelv.* 143. it was adjudged in an Action by the Heir of the Commoner, for the Continuance in his Time.

Time. *Vide Cro. Jac. 195. Yelv. 104, 105. &c. Sed vid. 1 Lutw. 108.*

Again it's said, That if the Sheep of the Commoners are killed, by falling into the said Cony-Burrows so made by the Lord; yet they cannot justifie the digging of the Land, and stopping them for the Cause aforesaid. *Trim. 11 Jac. B. R. sed dubitatur. 2 Bulst. 115, 116. adjudged. Cro. Jac. 229. 230.*

May not dig and stop up the Holes.

If J. S. hath Land adjoining to the Land of J. D. in which J. N. hath Common of Pasture, and J. S. makes Cony-Burrows in his Land, and stores them with Conies, which come into the Land of J. D. J. N. who hath the Common of Pasture, cannot there kill the Conies, because he hath nothing to do there, but to take the Grass with the Mouth of his Cattle: Adjudged, *Mich. 43 & 44. Eliz. B. R. int. Bellowe & Loughdon. Vide 1 Rol. Abr. 90. pl. 9. Cro. Eliz. 876.* The Action being brought by J. D. adjudged; for the Cony is a Beast of Warren, and profitable as Deer are, and not to be compared to Vermin. *Owen 114. Cro. Jac. 195. Yelv. 105. 2 Bul. 116. 1 Lutw. 108.*

May not kill the Conies.

Cony, a Beast of Warren.

Mich.

See where
it's said he
may kill
the Conies.

Mich. 10. Car. Adjudged int. Eversby & Wilkinson, in B. R. Such a Commoner brought an Action upon the Case against J. S. who, without any lawful Grant or Prescription, had stored the Land adjoining with Conies, by which the Conies came into the Land where he had Common, whereby he lost his Common; and adjudged that the Action does not lie, and a Judgment given in *Banco*, reversed accordingly in this Case in a Writ of Error; and the Court gave the Reason, because here the Commoner may kill the Conies. *Vide Cro. Car. 387. 1 Rol. Abr. 90. com. 1 Jon. 356.* Same Case adjudged, and the Judgment reversed accordingly.

But cannot
have an
Action.

Justifica-
tion of ta-
king Cat-
tle. Da-
mage fea-
sant.

A Commoner may justifie the taking of the Cattle of a Stranger Damage feasant upon the Common in his own Name, for the Interest which he has in the Common. *15 H. 7. 2. b. 12, 13. b. 14 H. 7. 3. b. Co. 9. Marys Case, 112. b. F. N. B. 128. c. 10 Ed. 4. 4. 15 H. 7. 13. b. agreed.*

How he
may lay an
Action.

But he can have no Action, unless laid *per quod* his Common was impaired. *Kelw. 47. a.* But for this, *Vide 9 Co. 112, 113. 1 Brownl. 197.*

2 Brownl.

2 Brownl. 55. 1 Rol. 89. pl. 8. Br. Com. 35, 39. Br. Justification 15.

And if a Copyholder, by the Custom of a Manor, has used to have Common for all his Cattle Levant and Couchant upon his Customary Tenement, in a certain Place Parcel of the Manor, and a Stranger digs Turfs there, and carries them away, by which his Common is impaired; An Action upon the Case lies, declaring, That the Defendant dug so many Turfs there, and them with his Horses and Carts (the Grass then and there growing, treading down with his Feet in Walking) from the Place aforesaid, unjustly did take and carry away, whereby the Plaintiff could not have his Common for his Cattle in so beneficial a Manner as before he had; and this is said to be a good Declaration. Though the Commoner cannot have any Damage, for the taking and carrying away of the Turf; yet the coming upon the Land with his Horses and Carts to carry them, is a Prejudice to the Common. And there per

Action by Common, or upon digging Turfs.

How he must declare in Case.

What is the Cause of such Action.

And his Common is impaired, is the Cause of the Action, and the carrying and taking them is a Means of the Impairing thereof. Mich. 9 Car.

inter

inter Terry & Godier, adjudged. This being moved in Arrest of Judgment upon such a Declaration, the Damages being intire. *Holland & Lovel* a like Point. 2 *Brownl.* 148. 9 *Co.* 113. *Co. Ent.* 9. pl. 8. 14. pl. 12. *Godb.* 343. 2 *Rol. Rep.* 308. *adjoinatur.*

How he
must de-
clare upon
Trespas by
a Strangers
Cattle.

That Trespas lies against a Stranger, for suffering his Horses, &c. to eat, &c. the Grass, whereby he could not have his Common in so beneficial a Manner. 9 *Co.* 11. 2 *Brownl.* 55. *Jenk. Rep.* 144. By which Book, though the old Opinions are otherways, yet an Action will lie, else the Commoner may be without Remedy; for the Cattle may be gone before he can take them *Damage feasant*. But he shall not have an Action for every petty Trespas; but for such only, whereby he could not have his Common in such a beneficial Manner. 9 *Co.* 113. 1 *Brownl.* 197. *Br. Common* 24. *Kelw.* 47. 1 *Rob. Abr.* 405. pl. 5.

Not for every
very little
Trespas.

Where the
Lord puts
in his Cat-
tle contra-
ry to Cu-
stom.

If there be a Custom that a Close ought to lie fresh, and hained every second Year till *Lady-Day*, after the Corn cut and carried away, and 7. *S.* hath used Time out of Mind to have Common in the said Close after *Lady-Day*, till it is sowed again with

with Corn, for his Cattle Levant and Couchant, upon a certain Tenement, as appurtenant thereto: In this Case, if the Lord of the Soil of the said Close puts in his Cattle in the said Close against the Custom, when it ought to lie fresh and hained: By the Custom the said J. S. though he be but a Commoner, yet he may take the Cattle of the Lord ^{Commoner may take them Damage feasant}, and justify it in an Action of Trespass brought against him by the Lord of the Close where he took the Cattle; for it will be the worse Common, if the Lord may eat the Grass before the Common is to be taken by the Custom. *Mich. 14 Car. inter Trulock & White* adjudged, this being moved in Arrest of Judgment.

So where the Lord by Custom is stinted to a certain Number of Cattle, and yet he puts in more, *Yelv. stinted so a Number. 29. vide Cro. Jac. 208. 1 Brownl. 187, 188.* In which Case some of the Judges doubted, whether as the stinting the Lord was gained by Custom, the Custom and Usage to distrein J. S. ought not to be alledged; but how far the Lord may be restrained to a certain Stint. *Vide 2 Roll. Abr. 267. Let. L.*

'Tis

*General
Rule.*

'Tis said to be a general Rule, That in other Cases the Commoners cannot distrein or chase out the Cattle of the Lord or Tertenant, Damage feasant; for which, see 2 *Leon.* 203. *Relv.* 104, 105, 129. *Cro. Jac.* 208. 1 *Brownl.* 187, 188. *Golb.* 182.

*Where
Commoner
may not
justifie his
Intent.*

A Commoner in an Action of Trespass cannot justifie his coming there, with an intent to put in his Cattle there if he does not put them in. Adjudged, *Pas.* 17 *Jac. B.* inter Sir H. Spelman and Hermitage.

*Where he
may.*

But the Commoner may justifie his coming to see if the Pasture in it be fit to receive his Cattle. *Pas.* 17 *Jac. B.*

*Where
Commoner
of Estovers
may not
take Wood
cut by the
Grantor.*

If A. hath Common of Estovers in the Woods of J. S. and J. S. cuts Part, or all the Wood; yet A. cannot take any Part of this which is cut, but shall be put to an Affise or Case, as his Estate is. *P.* 17 *Jac. B.* ut *supra*: *Vide Cro. Eliz.* 826. *Cro. Jac.* 257. 1 *Rol. Abr.* 567. *Pl.* 3. *Relv.* 188. 1 *Brownl.* 197, 220. 1 *Bul.* 93, 94. *Vide 9 Co.* 112. 1 *Brownl.* 197. 1 *Rol. Abr.* 108. *Pl.* 22. 5 *Co.* 25.

*Or if cut
by a
Stranger.*

So if one grants to me 1000 Cords of Wood to be taken at my Election, and the Grantor or Stranger cuts down all or part of the Wood,

I can

I can take no Part of that which is cut down. 5 Co. 25 Sir Tho. Palmers Case. Cro. Eliz. 820. Noy 32. Moo. 692. Pl. 955. Relv. 188.

But if a Man claims all the Thorns, &c. growing in such a Place, he may take them, though cut down by another. Cro. Jac. 257. Relv. 188. 1 Brownl. 219, 220. 1 Bulst. 93, 94.

If a Common every Year in a Flood is surrounded with Water, yet the Commoner cannot make a Trench in the Soil to avoid the Water, because he has nothing to do with the Soil, but only to take the Grass with the Mouth of his Cattle. 12 H. 8. 2, 13 H. 8. 15. D. 6 H. 8. 36. b. 39. Vide 2 Bul. 116. Bridgm. 10. Godb. 52.

So the Commoner cannot cut Bushes, Fern, &c. which impair the Common, Bridgm. 10. unless it be by Special Prescription; for if he makes any Thing *de novo* in the Land, he is a Trespasser, but he may amend and reform a Thing abused. And therefore, if the Land be full of Mole-Hills, he may dig them down, 1 Brownl. 228. So if there be Holes dug in the Common to the Damage of the Land, they may

Where he
may take
Thorns cut.

Where a
Common is
surrounded
with Wa-
ter.

Where he
may not
cut Bushes,
Fern, &c.

May dig
down Mole-
Hills.

may put again the Earth dug into its Place. *Ibid.*

Approvement of Common concerning it.

*Not by
Common
Law.*

By the Order of the Common Law, there could be no Approvement, because the Common issues out of the whole Waste. 2 *Inst.* 85.

*Unless by
Common
Appendant.*

By the Common Law, the Lord might approve against any that had a Common Appendant, but not against a Commoner by Grant. 2 *Inst.* 474. 1 *Roll. Rep.* 365.

*By the Statute of
Merton.*

By the Statute of *Merton*, cap. 4. because great Men having enfeoffed others of small Tenements in the great Manors, complained they could not make their Profit of the Residue of their Manors, as Waste Woods and Pastures: It was provided, when such Feoffees bring a *Writ of Affise* for their Common of Pasture, and it is alledged they have not sufficient Pasture belonging to their Tenements Ingress or Regress, the Truth shall be enquired by the *Writ of Affise*; and if found they have not sufficient, &c. they shall recover Seisin by the View of the Inquest, and by their Discretion shall have sufficient, &c. but if found they have sufficient

Inquest upon an Affise.

Seisin recovered.

sufficient

sufficient, &c. the other shall make the Profit of the Residue, and be quit of the Assise. *Profit of the Residue.*

This Statute was made 20 H. 3. 20 H. 3. See the Explanation thereof, 2 *Inst.*

85, 86. *Vaugh.* 257.

That it extends only to enable the Lord to approve against his Tenants. 2 *Inst.* 85. So it may be tried in an Action of Trespass. 2 *Inst.*

How Statute extends, &c.

8. *Godb.* 117.

Or if the Lord inclose any Part, and leave not sufficient Common in the Residue, the Commoner may break down the whole Inclosure. *Upon Lords Inclosure.*

Inst. 88.

It extends not to Common of *Not to a* *Piscary,* *&c.* *87.*

It extends not to Common in *Not to* *Common in* *Gross.* *86.*

When 'tis found they have not sufficient, the Inquest shall find what is insufficient, that the Lord may approve the Residue. 2 *Inst.* 88. and though after it should prove insufficient, the improvement continues. *Id.* 87, 88.

Lord may approve the Residue.

The Approvement is to be made *By Inclosure.* *Inclosure,* and not by digging *Coals, &c.* 2 *Inst.* 87. 1 *Syd.*

And

By a
Feoffee.

And if the Lord makes a Feoffment of Part, his Feoffee may inclose; for the Feoffment in its Nature was an Improvement. 2 *Inst.* 8.

Purchase
by Tenant.

And thereby 'tis discharged of the Common, and if the Tenant purchase it, his Common is not extinguished. *Ibid.*

May not
improve
all.

But the Lord cannot improve the whole, leaving them sufficient in other Lands. 2 *Co.* 25. b.

Stat.
Westm. 2.
construes
Stat. of
Merton.

By the Statute of *Westm.* 2. cap. 4. the Statute of *Merton* shall bind Neighbours, and such as claim Common of Pasture appurtenant to the Tenements; but not such as claim Common by Special Grant or Feoffment, for a certain Number or otherwise.

How
Neighbours
are bound.

A Neighbour is bound, though he dwell in another Town, so the Town and Commons adjoin. 2 *Inst.* 474.

Where the
Tenant
may im-
prove.

And if the Lord hath Common in the Tenants Ground, the Tenants may improve with in this. *Ibid.* And it there seems as if the Common of the Lord was reserved upon the first Feoffment. *Ibid.*

Concerning
Windmills,
Sheep-cotes,
&c.

That by Occasion of a Windmill, Sheep-cote, Dairy, enlarging of Court necessary or Curtilage, not

shall be grieved by Assise of Novel disseisin for Common of Pasture.

Note, It's said, these above are but *House for*
 or Example ; for the Lord may erect a *Beast-*
 an House for the Habitation of *Keeper.*
 Beast-Keeper. 2 Inst. 476. 1 Lev.

2. And it must be shewn that it
 was done for his necessary Resiance.
 1. Syd. 79. 1 Keb. 283, 314. and
 whether of a necessary Curtilage
 should be an ancient one, *Dubitatur.*

And none in such Cases shall be *Though not*
 grieved, though there be not suffi- *sufficient*
 cient of Common left. 2 Inst. 476. 1 fr.

Lev. 62.

And where any having Right *Upon levy-*
 to approve, levies Dike or Hedge, *ing Dikes*
 and it is thrown down in the Night *and Hedges,*
 or other Season, &c. And it cannot *&c.*

be known by Verdict of Assise or
 injury by whom, and the Men of the
 Towns near will not indict such as
 are guilty of the Fact ; the Towns
 near adjoining shall be distreined to *Repar a-*
 levy the Hedge or Dyke at their *tion and*
 own Costs, and to yield Damages. *Damages.*

It is said, that the cutting down
 of Timber, is not within the Act.

Raym. 487.

That if the Prostration in the *Publick*
 Day or Night was before the Face *Prosterna-*
 of the Owners, or so Publick, that *tion.*
 the

the Offenders may be known ; it is not within the Act. *Lev.* 108. a Traverse taken accordingly.

Inquisition, &c.

For the Inquisition and other Proceedings upon this Act, *Vide Cro. Car.* 280, 440, 580. 1 *Fon.* 307. 1 *Syd.* 107, 212. 1 *Lev.* 108. 1 *Mod.* 66.

The Indictment when.

And no Time being appointed for the Indictment, it's said it shall be intended within a Year and a Day 2 *Inst.* 476. 1 *Rol. Rep.* 365. per *Cro. Car.* 440. a convenient Time.

Alien against bordering Towns.

That the Lord shall bring his Action upon this Statute against the Towns bordering round about the Town where the Fact was done ; and Judgment shall be given That they shall at their proper Costs make the Ditch, &c. 2 *Inst.* 477. 1 *Rol. Rep.* 365.

The Statutes confirmed, &c.

And per 3 *Ed. 6. ca. 3.* The Statutes of *Merton* and *Westminster* are confirmed, and treble Damages given to the Commons that recover in such Assise against the Lord.

Admeasurement of Common.

Where it lies.

Concerning the Admeasurement of Common, and where it lies. *Vide F. N. B.* 125.

It lies by one Commoner against another; but if the Tenant sur-

By a Commoner.

charges the Common, the Lord

shall not have a Writ of Admeasurement against the Tenant. *Ibid.* A. D.

Per 2 Inst. 86. It lies only for and against such as have Common Ap-

For Common Ap-

pendant: But 2. & Vide F. N. B.

pendant.

125. D. 1 Rol Rep. 365.

Upon the Suit of one Commoner

All ad-

against another, it's said all the Com-

measured.

moners shall be admeasured. F. N. B.

125. B.

So if the Lord surcharge the Com-

Not a-

mon, or approve without leaving

gainst the

sufficient, the Tenant shall not have

Lord.

Writ of Admeasurement against

him, but an Affise, F. N. B. 125. D.

That no Writ of Admeasurement

Not

lies against a Commoner sans Num-

against

ber, nor shall his Common be ad-

Commoner

measured. *Ibid.* but the Tertenant

sans Num-

may distrein his Cattle. 1 Saund, 345.

ber.

Vide 1 Lutw. 98. That one may

Forrest.

prescribe for Common in a Forrest

or Sheep in the Feme Month, but

may not prescribe for Goats. *Idem*

C H A P. VIII.

Several Observations upon the Statute 29 Car. 2. which was made to prevent Frauds and Perjuries, and relates to Bargains in buying and selling Goods and Chattels.

Bargain of Goods above 10 l.

FIRST, it is to be observed, That no Contract for the Sale of any Goods, Wares and Merchandizes, for the Price of ten Pounds Sterling, or upwards, shall be allowed to be good,

Goods delivered.

Except the Buyer shall accept part of the Goods so sold, or actually receive the same ;

Earnest.

Or give something in Earnest to bind the Bargain, or in part of Payment ;

Note or Memorandum.

Or else that some Note or Memorandum in Writing of the said Bargain be made and signed by the Parties to be charged by such Contract, or their Agents thereunto lawfully authorized.

And if so done, the Action for the Money may be brought any Time within six Years (or after six Years, if an Original Writ be sued out within the six Years).

That no Action shall be brought upon any Agreement that is not to be performed within the Space of one Year from the making thereof: *No performance after a Year.*

Nor whereby to charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate: *No Executor to answer, &c.*

Or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default, or Miscarriage of another Person: *Nor one for the Debt of another.*

Or to charge any Person upon any Agreement made upon Consideration of Marriage: *Nor upon Con' of Marriage.*

Or upon any Contract or Sale of Lands, Tenements, or Hereditaments, or any Interest in or concerning them: *Or Contract of Lands.*

Unless the Agreement upon which such Action shall be brought, or some Memorandum or Note thereof shall be in Writing, and signed by the Party to be charged therewith: *Unless a Note or Memorandum.*

So that if the Agreement be for Goods, Wares, or Merchandize, under the Price of ten Pounds; yet if *Agreement not to deliver within a Year.*

by that Agreement they be not to be delivered within a Year ;

*Void with-
out Writ-
ing.*

That Agreement seems to be void, unless put in Writing, and signed by the Party to be charged.

*Earnest
there will
not bind.*

And though Earnest be given up- on such an Agreement, not to be performed within a Year, it seems it will not help.

*Receipt of
Part will
not bind for
the Re-
mainder.*

Also if the Contract be for Goods, &c. above ten Pounds ; and though Earnest be given, or part of the Goods received, yet if the Remain- der be by such Contract to be de- livered after a Year ; this Contract (unless put in Writing, and signed) it seems it will not bind for the Re- mainder. *Sed quær.*

*Nor Agree-
ment, &c.
to be per-
formed af-
ter a Year,
without
Writing.*

And so if the Agreement or Pro- mise be to do any other Thing or Things that are not to be perform- ed in a Years Time from the ma- king, it will not be binding, un- less such Note or Memorandum be made.

*How if no
Day be set.*

But if no Day is set, or the Time is uncertain, as to pay so much at the Day of Death, &c. it is other- wise : For it does not appear but that might happen within a Year.

Again,

Again, If any Person promises to pay the Debt of another Person, or to answer for the Default or Mis-carriage of another Person. *To pay another's Debt, &c.*

As if he should say, Trouble not such a Man, and I will pay you the Debt he owes you : *Example.*

Or, Trust such a One, and if he don't pay you, I will :

Or, If he don't do such a Thing, I'll make you Satisfaction.

These Promises, as aforesaid, without a Note or Memorandum under Hand, will signifie nothing, tho' it was at his Request, and though you may alledge and shew a good Con-sideration for it.

Also if the Agreement be upon some Consideration of Marriage. *Upon Con-sideration of Mar-riage.*

Example.

As, I will give you so much if you will marry my Daughter or Kins-woman, &c.

Here the Marriage is made the Consideration, and so void without Writing.

But to say, I will give you so much for such a Horse at the Day of my Marriage; this is otherwise, and good without Note: For the Horse *Exception.*

in this Case is the Consideration of the Promise.

*About Sale
of Lands,
&c.*

And if it be about the Sale of Lands, Tenements, or Hereditaments, or any Interest therein, it must be put in Writing under Hand as aforesaid.

Example.

As if a Man promise to sell you such a House, Piece of Land, or the like :

Example.

Or to make a Lease for Years, or Life, of any Lands or Tenements : 'Twill not bind without Writing, &c.

*To charge
on Execu-
tor.*

And lastly, not to charge any Executor or Administrator upon any special Promise to answer Damages, &c.

Example.

As if an Executor or Administrator says to one that is about to sue him for Money owing by the Testator, &c. Forbear your Suit, and I will pay your Debt. This Promise will

will not bind to make him answer Damages of his own Estate, unless it be put in Writing under Hand, &c.

Therefore every Agreement not 1. to be performed within a Year.

Every Agreement with an Executor concerning the Testator's Estate. 2.

Every Agreement to pay the Debt, &c. of another Person. 3.

Every Agreement, where Marriage is the chief Consideration. 4.

Every Agreement concerning the Sale of Lands, &c. must be put in Writing, and signed by the Party to be charged. 5.

So that in the Particulars above-named, it is absolutely necessary that there be some Note or Memorandum to make good such Contracts, Promises and Agreements. *Caution.*

Note, That by the Stat. of 7 Jac. 1. 12. None keeping a Shop-Book, his Executors or Administrators, shall be allowed to give it in Evidence for Wares or Work, above one Year before the Action brought, unless they have obtained a Bond or Bill for the Debt, or brought an Action for the Money within one Year. *Shop-book given in Evidence.*

next after the Wares delivered, or Work done.

But this Act is not to hold Place between Merchant and Merchant, Tradesman and Tradesman, or Merchant and Tradesman, for any Thing falling within the compass of their mutual Trades and Merchandize.

Concerning Notes promising Payment.

It may here be observed, from Statute 3 & 4 Ann. c. 9. That all Notes signed by any Person, &c. whereby any such Person, &c. shall promise to pay another Person, &c. or Order or Bearer, the Money mentioned in such Note shall be construed to be, by vertue thereof, due and payable to such Person, &c. to whom the same is made payable.

*Notes assign-
able
over.*

And also, such Note payable to such Person, &c. or Order, shall be assignable over, in manner as Inland Bills of Exchange are. And the Person to whom such Money is payable, may maintain an Action for the same, as they might upon such Bill of Exchange. And the Person, &c. to whom such Note so payable, or Order, as assigned or indorsed, may

may maintain an Action against the Person, &c. who signed, or any who indorsed the same; as in Cases of Inland Bills, and recover Damages and Costs of Suit: And in Case of Nonsuit or Verdict against Plaintiff, the Defendant to recover Costs against the Plaintiff. *Damage and Costs.*

See more in the Statute concerning drawing, accepting and protesting Inland Bills.

C H A P. IX.

Several necessary Matters relating to Farmers, and such as keep and feed Sheep, and other Beasts; as also relating to Actions for Nu- sances done by one Tenant to another, &c.

*None to
take above
two Farms.*

BY 25 H.8.13. none shall receive or take in Farm for Term of Life, Years, or at Will, by Indenture, Copy of Court Roll, or otherwise, any more Houses or Tenements of Husbandry, whereunto any Lands are belonging, in Town, Village, Hamlet or Tything within this Realm, above the Number of two such Holds or Tenements, and they are to be situate in the same Parish where he dwells, on pain to forfeit to the King and Informer three Shillings and four Pence for every Week he takes the Profits of them.

*How by Spi-
ritual Per-
sons.*

By Stat' 21 H.8. 13. No Spiritual Person shall take to farm to him- self (or to any other for his Use) any Lands or other Hereditaments for

for Life, Years, or at Will, on pain to forfeit ten Pounds for every Month he so continues the same, to be divided betwixt the King and the Prosecutor.

But this Act not to extend to any Spiritual Person, for taking any Archbishopricks, Bishopricks, Abbies, Priories, or Collegiate, Cathedral, or Conventual Churches; nor to any such Person who shall tender or make any traverse upon any Office concerning his Freehold.

The said Act also provides, That *Parsonage* no Spiritual Person shall take in *or Vicarage* Farm any Parsonage or Vicarage, on pain to forfeit 40 s. for every *Forfeiture* Week that he or any other for his Use so occupies the same, and also ten times the Value of the Profit or Rent that he makes thereof; both which Forfeitures are to be divided betwixt the King and the Prosecutor. See after.

Also by 25 H. 8. 13. None shall *Sheep keeping* keep in his own Possession, at any one Time above two Thousand Sheep, on pain to forfeit for every Sheep kept above that Number 3 s. 4 d. to be prosecuted for a Subject within one Year, and for the King within Three; but here Lambs shall
N 5 not

not be accounted as Sheep 'till *Midsummer* Twelvemonth after their fall.

Exception.

And if any happen to have more Sheep than two Thousand, by reason of any Executorship or Marriage, they shall not be impeached by this Law, so that in one Year after they put off so many, that at the end of the Year they may not have above two Thousand: Neither shall a Child, during his Nonage (nor any Person for him) be endamaged by this Act, which Child shall have by Legacy above two Thousand Sheep given him.

Exception.

But every Temporal Subject may keep (upon his own Demesn Lands) as many Sheep as he will, or for the Maintenance of his House, above the Number of two Thousand, notwithstanding this Act.

Sixscore pro Cent.

A Thousand Sheep meant by this Statute, shall be accounted after the rate of Sixscore to the Hundred.

Fine.

Justices of the Peace have Power to hear and determine the Offences committed against this Act; but shall not rake a less Fine than is limited by the same.

And

And by the Statute of 2 & 3 P. & *Sheep-feeders.*
M. 3. Whosoever shall feed above
 One Hundred and Twenty shorn
 Sheep for the most Part of the Year
 upon his Grounds, which be several
 and apt for Milch Kine and not Com-
 monable; and shall not for every
 Sixty Sheep keep one Milch Cow;
 and moreover, for Sixscore Sheep *To keep Cows.*
 Yearly rear one Calf during the
 Time of keeping such Sheep, shall
 forfeit to the Queen and Informer for
 every Cow not kept, for every Month
 20 s. and as much for every Calf not
 reared.

Also, whosoever shall feed upon *Beast-feeders.*
 his several Pastures above Twenty
 Oxen, Ronts, Steers, Scrubs, Hei-
 fers, Kine, and shall not for every
 ten Beasts keep one Milch Cow, and
 for every two Kine wean and rear
 up Yearly one Calf (except it die) *2 & 3 P.*
 shall forfeit as before; the Suit to *& M. 3.*
 be commenced within one Year af-
 ter the Offence committed, and not
 to bind such as keep Sheep or feed
 Beasts for their own Provision. Ju-
 stices in their Sessions have Power
 to hear and determine the Breach
 of this Statute.

The Stat. 27 H. 8. 6. provides for the keeping of Mares in Parks.

And 23 H. 8. 13. is made against keeping Stoned Horses (under size) upon Forrest or Common Ground.

Several Actions on the Case, necessary to be known by all Farmers, &c.

*Stopping -
up a Way.*

If one disturb another in his Way to a House or Land, by stopping or straitning of it, or stop or turn his Water coming to his House, Mill or Ground, or the Light to his House, or if one stop a Ditch or River, or set up Flood-gates, so as to make the Water overflow and drown his Ground adjoining, he may have an Action of the Case against him for it. See after, High-way, Private-way, &c.

*Turning off
Water.*

But if a Man stop or turn Water only to amend his Banks or Mills, having by Custom and Use done it, this is justifiable. 4 Co. 86. 1 Co. 50. Litt. Rep. 267. 1 Vent. 274. 2. Vent. 138, 185, 288, &c.

*Drowning
another's
Ground.*

If one stop a Stream of Water and put it out of its old Course, and by that Means my Ground is drown'd,

I may

I may have an Action. *New Book of Entries, f. 18. Dyer 248.*

Where I have an ancient Mill, *Diverting Water from a Mill.* and an ancient Watercourse to maintain it, if any Man shall divert it that I cannot have the Use of it to my Mill, as formerly, I may have an Action on the Case against him. *Stiles's Rep. 370. 4 Co. 86. Vide 3 Lev. 133. 1 Mod. Rep. 48.*

If one disturb me in my Walk, *Disturbing Fold, or Foldage, Watering-place, Walk or Church-way, or High-way, Isle, or Foldage, Seat in the Church, or any other &c.* Profit appendant which I have had Time out of Mind, as belonging to my ancient House by Prescription, I may have an Action. *4 Co. 32. 89. 5 Co. 1. 76. 12 Co. 105. 1 Bulst. 47, 69. 2 Bulst. 14, 129. Bendl. 89.*

Action lies for not folding Sheep *For not folding his* on the Plaintiff's Land, whereby the Plaintiff lost the Benefit of Fold-Sheep. *age. 2 Vent. 138.*

If one disturb me in my Com- *Disturbing Common.* mon, that I cannot have it as liberally as formerly I have had, an Action lies. *Stiles's Rep. 164. 1 Cro. 390. Hetl. 143.*

If one dig a Pit in a Place where *Digging a Pit there.* I have Common, by occasion whereof my Beast there going falls in it and

and is hurt, I may have an Action.
2 Cro. 158. 1 Vent. 295.

*Inclosure
Common.*

If one inclose Land which should lie open in a Manor, by which the Commoners have not enough for to common their Cattle, or eat up the Common so much that the Commoners have not enough; in this Case it's said every Commoner may have his Action against him. *F. N. B.* 145. 9 Co. 113.

*Watering-
Place.*

If the Inhabitants of a Parish have a Watering-place by Prescription, and be disturbed in it, each of them (as it seems) may have an Action for such Disturbance. 27 H. 8:27. *Finches Ley*, 187.

*Executor
of Lessee
owned.*

If the Lessor out me that am an Executor of the Lessee for Years, or my Executors after me of the Term, each may have an Action on the Case, or an *Eject. Firmæ*. 4 Co. 94.

*Lessor hin-
dred to
view.*

If the Lessee keep out his Lessor coming to view his House; if any Waste be done, the Lessor may have an Action against him. 2 Cro. 478.

*Lessee for
Life a-
gainst Les-
see for
Years.*

If a Lessee for Life make a Lease for Years, and the Lessee for Years commits Waste, for which the Lessee for Life is punished; in this Case he may have an Action against the Lessee for Years, and recover as much

as the Lessor doth or may recover of him. *Pas. 38 Eliz. B. R. Genmies Case.*

So if the Lessee for Years of a ^{Lessee a-} House, lease it for Part of the Time, ^{gainst Les-} and that Time expire, and the Les- ^{see for} see continue in full Possession, and ^{Years.} pull down part of the House, the first Lessee may have an Action of the Case against him. *Trin. 6 Car. 1. B. R.*

If my Lessor that is bound by ^{Lessor's} Law to repair my House, or to pay ^{Negl. & to} Subsidies, or the like, neglect it, and ^{Pay, &c.} I suffer thereby, I may have an Action on the Case against him. *Dyer 36. Pl. 37. 21 H. 7. 12.*

If the Lord cut down the Copy- ^{Lord cut-} holders Trees without his Leave, (or ^{ting down} else a special Custom of the Manor ^{Copyholders} to enable him to it) the Copyholder ^{Trees.} may have Case against the Lord for it. *Mich. 3 Jac. B. R. Cross and Abbot;* and *Trin. 17 Jac. by Justice Haughton*, and this notwithstanding he leave the Loppings of them.

Also if the Lord cut down any ^{similt.} Tree of his Tenants that is to have the Lops, and take it away, Case lieth. *1 Brownl. 197, 231.*

If

Simile.

If the Lord cut down all the Copyholders Trees, and not leave him Fire-Wood, &c. Tenant may have Case against him. *Brownl. ibid.* 141, 197, 208. 2 *Brownl.* 57, 331.

Refusing to grind.

If the Tenant refuses to grind at the Lord's Mill, as hath been used Time out of Mind, Action lieth against him. 1 *Vent.* 167. 2 *Vent.* 292. 2 *Saund.* 215.

Damage by Fire.

For voluntary firing his House, whereby my House is burnt. *Vide Bendl.* 153. and 3 *Lev.* 359.

See the late Act at the End of this Treatise.

Not repairing Fences.

If one be Time out of Mind to repair a Hedge between my Close and his, and he let it be unrepaired, that my Cattle go into his or other Mens Ground, or other Men's Cattle go into my Ground, by reason of which I have Damage, I may have Action of the Case for it. 2 *Cro.* 669. 20 *Jac. B. R.* See 1 *Vent.* 264. 274, 275.

Not scouring Ditches, &c.

So if one be to repair or scour a Ditch, and do it not, by which my Land is drown'd, or I have any special Damage, Case lieth against him. *F. N. B.* 93. *G.* 11 *H.* 4. 28. Action, &c. 30, 34, 36.

If one be to repair a Wall or Bank of a River, and do it not, or doth it not sufficiently, whereby my Land is surrounded, I may have an Action *sur le Case.* *Banks of a River, &c.*

But in these Cases, and such like, I must aver some special Damage to me, by the not doing thereof. *Trin. 20 Jac. B. R. 2 Bulst. 280.* *Special Damage.*

Also an Action of the Case will lie for me against him which ought to repair a Mound or Bank of the Sea, or of any great River, and doth it not, by which my Land is drown'd: So of the Bank of a River. *29 Ed. 3. 32. 12 H. 4. 7. 15 Ed. 4. 18.* *Sea Banks, &c.*

Note, But if the Breach and Inundation be by any extraordinary Accident, as by a Tempest, or the like, no Action lieth. *10 Co. 139.* *Accident.*

If the Highway be to be repaired by any special Person, and is not, and I have any special Damage thereby, I may have Case for it. *5 Ed. 4. 3.* *Highway.*

If there be a Charge upon any Man, by reason of the Tenure of his House or Land, to repair any private Way, Bridge, Gutter, or the like, and he doth it not, and thereby I have any special Damage, Action *Private Way not repaired.*

Action lieth against him. *Old Book of Entries, f. 10.*

*House not.
repaired.*

So I may have an Action on the Case against one for not repairing of a House ready to fall on my House. *22 H. 7. 98. Pl. 4.*

*Distur-
bance by
an Upper
Room.*

If one have a Room over me in a City or other Place, and so carry himself in it as to annoy me that am under him, as if he have a Shop or Warehouse over me, and I have a Cellar under it, and he lay such an extraordinary Weight of Goods more than usually have been, and so break it down upon me, I may have Case against him for it. *Poph. 46.*

*Damage
by an Un-
der-Room.*

If I have a Building beneath, and another Man a Building above me, and I suffer mine to decay so as to hazard his, or he suffer his to decay, so as to hazard mine, each of us may have an Action on the Case against the other. *Kelw. 48. See 1 Brownl. 4.*

*Over-
building.*

If a Mandoth over-build my House, so that his House-Eaves do drop upon my House and cause it to perish or trouble my Dwelling, I may have Action on the Case against him. *14 Brownl. and Goldsb. 4.*

If
new
cier
up
Lig
hav
Mar
inla
to
upo
buil
jus
y Ca
and
don.
If
Wal
of m
agai
his
Woo
stop
tion
prev
tion
A
167
B
two
one
Lan
look

If a Man set up a House upon a new Foundation so near to my ancient House, that thereby he stops up my Windows and takes away my Light, the Air and Prospect, I may have an Action on the Case. For a Man may not in London or elsewhere, enlarge his House in Breadth or Length to stop his Neighbour's Light; but upon an ancient Foundation he may build it as high as he will; for *cujus est solum ejus est usque ad Cælum.* 5 Co. 10. 9 Co. 55, 56.. See after; and see the Act for Re-building London.

Lights and Windows stopping.

London.

If a Man shall build or set up a Wall against the Window or Light of my House, I may have an Action against him, albeit he build upon his own Ground. So if he set up a Wood-pile upon his own Ground to stop up Lights, I may have an Action. 9 Co. 54. 5 Co. 108. But if it prevent my Prospect only, no Action will lie for this. Co. 8. 57. 1 Mod. Rep. 55. Raym. 87. 1 Sid. 167.

Wall, Wood-piles, &c.

But if two Men be Owners of two Parcels of Land adjoining, and one of them build a House on his Land, and make Windows and Lights looking into the other Lands, and this

Continuance of Lights and Windows.

this continueth thirty or forty Years, the other may build or lay any Thing upon his own Land, and stop them. 1 Cro. 118, 129. 1 Bulst. 116.

*Wrong
purged.*

If one House be built hanging over another wrongfully, and after they come both into one Hand, the Wrong is now purged ; so that if after they come into several Hands, neither Parties is to complain of the Wrong done before. *Hob.* 173.

*Nusance by
Dye-houses,
&c.*

Note, The erecting of a Dye-house, Tan-house, Brew-House, or Lime-kiln, may be a Nusance to a Neighbourhood, by which if I have any considerable Offence in the Smell to my Health, or by the Smoke to our Bodies that live in the House, or Trees of the Garden or Yard, I may have an Action of the Case for my Relief. *Pas.* 5 *Fac.* B. R. 5 Co. 73, 101, 108. 9 Co. 54.

*Setting up
a Pigsty,
&c.*

So if one set up a Pigsty under my House, and keeps Pigs in it, or a House of Office, and use it so near to my House that the Smell thereof doth annoy me, and hazard my Health, &c. I may have an Action. 5 Co. 73, 101, 108. 9 Co. 54.

So the keeping of a Chandlers or *Chandlers*
Butchers Shop so near my House, in *Shop.*
a Place inconvenient, to the Of-
fence of me in my Garden or House,
may be such a Nuisance for which I
may have an Action. *New Book of*
Entries, f. 18. Trin. 13 Car. B. R.
5 Co. and 9 Co. ut supra.

But if such a Man shall set up his *offensive*
Trade by me, though this be offen- *Trade.*
sive to me, by the laying of stinking
Heaps at his Door, and the like, I
can have no Action for this, unless
it be very great and much offensive.
1 Cro. 367. 13 H. 7. 26. yet this is In-
dictable.

If one throw a Beast dying of the *Dead Car-*
Murrain, or the Intrail or Offal of *casses, &c.*
it into my Ground, whereby my
Beasts are infected and die, I may
have Case against him. *Stiles Rep. 50.*

If one set out his Tythes duly, and *By Tythes.*
the Parson will not take them away
in convenient Time, Action lies.

So if one that hath bought Hay on *By Hay:*
my Ground, or in my House, and
suffer it to lie long whereby I am
damaged. *Godb. Rep. pl. 424. Et sic*
de similibus. Quer.

C H A P. X.

Some further Observations relating to Covenants in Leases, &c. With several modern resolved Cases relating to Pleadings in Covenants upon Leases.

Also concerning the late Act of Parliament to prevent Destruction of Houses by Fire, and new building of Houses within the Bills of Mortality.

Quiet Enjoyment.

A Covenant is either expressed in the Deed, or implied by Law, as by the Words *Demise* or *Grant*, the Law doth imply and intend that the Lessee shall quietly enjoy during the Lessor's Life. 4 Co. 8. *Dyer* 338.

Affirmative or Negative.

A Covenant may be in the Affirmative or in the Negative, and it may be executed, that is, of a Thing already done, or executory, *i. e.* of a Thing that shall be done hereafter: But if it be of a Thing present, it may be void; as if I covenant that my House is yours, this is void. *Plowd.* 330.

Covenants made by Deed Poll, By Deed Poll are as good and effectual as those made by Deed indented, so as the Party have the Deed to shew; but Covenant doth not lie upon a verbal Agreement, neither can it be grounded without a Writing, except by some special Custom, as in London. 3 Co. 63.

There needs no great Formality Words of Covenant. in the Words to make a Covenant; for if the Words of a Deed run thus, *That the Lessee shall repair, provided always that the Lessor shall allow Timber; or, That the Lessee shall scour Ditches, provided that the Lessor do carry away the Earth; also, That the Lessee shall pay twenty Shillings a Year Rent; or, That the Lessee shall not alien, and the like;* these are said to amount to good Covenants on both Sides, &c. Dyer 57. 150. 2 Co. Lord Cromwells Case.

But regularly in all Cases, where Conditional Words. Words that do begin the Sentence be Conditional, or have the Effect of a Condition, and do give another Remedy, there they shall not be construed to make a Covenant: Yet if Words of Condition and Words of Covenant be coupled together in the same Sentence (*as, Provided always,* and

and it is covenanted, and the like) in such Cases the Words may be construed to make a Covenant and Condition both. *Bro. Cov.* 21, 26, 38.

*Cause, &c.
to be first
performed.*

And note, That where a Covenant is pen'd Conditionally, and so as one Thing is the Cause of another, (as if one covenant to pay me 10 l. if I serve him a Year; or to new build a House so as he may have the old Materials) in all these Cases, if the Cause or Condition be not observed, the Covenant shall not be performed. *Co. Lit.* 204. *Dyer* 371.

*Lawful
Matter.*

Where the Substance and Matter of a Covenant to do any Thing is lawful, such Covenant is good; and generally where a Condition for the Matter of it is good, a Covenant comprehending the same Matter is good also.

*Matter Un-
lawful.*

But if the Matter required to be or not to be done by the Covenant be unlawful in the Substance thereof, then is the Covenant void, and doth not bind: So if the Covenant be impossible. *Dyer* 6. 13, 324, 251, 253.

*Covenants
how taken.*

A Covenant is to be always most strongly taken against the Covenantor, and most in Advantage of the Covenantee.

To be taken according to the In-*Intend.*
tent of the Parties, &c.

When no Time is limited for the *Time.*
doing of the Thing, it shall be done
in reasonable Time, and the like.
Plowd. 287.

Any one that is Party to the Deed *By whom.*
to whom the Covenant is made, may
take Advantage of the Covenant, but
not a Stranger.

As if *A.* covenant with *B.* to do *Stranger.*
an Act to *C.* who is no Party to the
Deed, and he doth it not; *B.* and
not *C.* must sue him upon this
Breach.

And regularly all those that do *Who bound.*
seal and deliver the Deed, and are
named and bound by the express
Words of the Covenant, (whether it
be Collateral or Inherent) are bound
by the Covenant contained in the
Deed.

And therefore if Heirs, Execu- *Heirs, &c.*
tors, Administrators or Assigns, be
named in the Covenant, for the most
part they are bound by the Cove-
nant.

And in all Cases of Inherent Co- *Inherent*
venants, *i. e.* that tend to the Sup- *Covenants.*
port of the Thing granted (in re-
spect of which it is presumed the
Lessor took the Lessee for the Land)

where a Man doth covenant for himself only, and doth not name his Executors and Administrators, or either of them; yet they are bound, and may be charged by the Covenant notwithstanding; and in some Cases the Law is so also for Collateral Covenants.

*Run with
the Land.*

And in most inherent Covenants, such as have the Land, albeit they be neither Executors nor Administrators, or either of them, but Assigns, &c. shall be charged by the Covenant, though they be not named, for these Covenants are said to run with the Land. 5 Co. 16, 17, 18.

*Covenant
gone.*

Where the Deed it self wherein the Covenants are contained, or the Estates on which the Covenants do depend, is gone and determined, there regularly the Covenants are gone also.

Breach.

But the Surrender of a Lease doth not discharge the Breach of Covenant which was before the Surrender. *Dyer* 10. 10 Co. 23.

*Become im-
possible.*

Where a Covenant is become impossible to be done by the Act of God, by this the Covenant is discharged; as where 7. covenants to serve B. seven Years, and dies before

fore the seven Years be expired,
1 Co. 98. *Plowd.* 286.

Where there is an exprefs Cove- *Express.*
nant in a Deed for quiet Enjoy-
ment, the implied Covenant is
gone, 2 Co. 80.

By a Release of all Covenants *Release of*
from the Covenantee, the Covenant *Covenants.*
is discharged, so as the Release be
by Deed ; for a Covenant by Deed
cannot be discharged by Word.
Therefore if *A.* covenant with *B.*
to build a House by a Day, and in
the mean Time *B.* doth bid or desire
him to let it alone ; this doth not
discharge the Breach of the Cove-
nant ; but the Lessor may sue for it
notwithstanding. *Pasch. 6 Car. Banco*
Regis.

Note, If there is only a Hand to a *Writing*
Writing, and not a Seal, Covenant *not sealed.*
lies not, but Case upon Agreement ;
and declare, That in Consideration
the Plaintiff had promised to per-
form the Agreement on his Part,
the Defendant promised to perform
on his Part, &c. And then assign
Breach, &c.

Where in a Covenant, the latter *Exposition*
Words being general, shall be re- *of Words,*
strained and expounded by the for- &c.

mer which were special, *Vid. Saund. Rep. 1 part, fol. 59, 60.*

Where in a Covenant, the former general Words shall be restrained and expounded by the latter special Words. *Idem 59.*

In Covenant, the former general Words, That the Original Lease is indefeazible, shall not be restrained by the latter Words, That the Assignee *haberet, teneret & gauderet, &c.* without any Lett, &c. of the Assignor, *Idem 60.*

A particular Covenant in Deed, may restrain a general Covenant in Law, *Ibid.*

*That he
was seized
in Fee.*

Covenant that he was seized in Fee, (notwithstanding any Act done) and that the Lands were of the yearly Value of 200 *l.* there the Words Notwithstanding, &c. may not be applied to the Covenant concerning the Value. *Ibid.*

Assignee.

What Action of Covenant lies for an Assignee of a Reversion at Common Law. *Idem 238, 239.*

Action of Covenant by an Assignee of a Reversion against the Lessee for Rent, need not be laid in the County where the Land lies. *Idem 239, 240, 241.*

An Action lies for a Lessor or his Assignee against the Lessee, upon his Covenant for Payment of Rent, notwithstanding that the Lessor or his Assignee had accepted Rent before of the Assignee of the first Lessee; for Covenant is not like an Action of Debt for Rent. *Idem* 240, 241. *Lessor and Lessee.*

If by a Deed sealed by both Parties, it is agreed, That the Defendant shall give the Plaintiff such a Sum for all his Lands in A. It will amount to a Covenant on the Part of the Plaintiff to convey the Land, *Idem* 320. *Agreement for Lands.*

Where Covenant lies upon the Word *Demise*, and where not. *Idem* 321, 322. *Demise.*

Where Covenant lies for *Misfeasance*, but not for *Nonfeasance*. *Idem* 322, 323. *Misfeasance.*

If a Man by Deed grant a Water-course, and stop it, the Grantee may have an Action of Covenant. *Idem* 322. *Water-course.*

If one of the Parties covenant to assure Lands, and the other, in Consideration of the same Covenant performed, covenant to pay a Sum of Money, he is not obliged to pay the Money until the Lands be assured, — But it is otherwise, if the *To assure Lands.*

Covenant had been in Consideration of the Covenant to be performed, *Saunders Rep. 2d Part, pag. 156.*

*Mutual
Covenants.*

Where in Mutual Covenants the Words, *In Consideration of the Performance thereof*, shall make a Condition Precedent, and where not. *Id. 156, 157.*

*Negative
and Affirmative.*

If the Covenant of the one Part be Negative, and the Affirmative Covenant on the other Part be in Consideration of the Performance thereof ; although the Negative Covenant is broken, yet the Affirmative Covenant ought to be performed. *Idem 156, 157.*

A Negative Covenant is not said to be performed, until it become impossible to break it. *Ibid.*

*Upon Warranty of
Lands.*

In Covenant upon a Warranty of Lands for Years, the Plaintiff ought to shew what Estate or Right he that entred into the Lands had at the Time of his Entry ; and it is not sufficient to aver, that he had a good Title. *Idem 178, 179, 180, 181.*

What Warranty shall be taken only for a Covenant. *Idem 180.*

An

An Action of Covenant lies against a Woman, upon a Warranty by her and her Husband, annexed to an Estate for Years in a Fine.

Idem ib.

Where, by the Grant of a Rever- ^{Covenant} sion, the Rent reserved upon a Lease ^{transfer} for Years is well transferred to the ^{red.} Grantee, the Law transfers also to him the Covenant of the Lease for the Payment of it, as incident to the Rent. *Idem 371.*

If in an Action of Covenant, any Breaches are well assigned, and others ^{Breaches} ^{assigned.} ill, and the Defendant demurs to the whole Declaration; the Plaintiff shall have Judgment for those Breaches that are well assigned, and for the Residue he shall be bar'd. *Id. 380.*

*Some Resolved Cases as to Pleadings in
Covenant upon Leases.*

In Covenant against an Assignee ^{Breach for} for not repairing a House: Defendant pleaded in Bar an Accord ^{not repair} being between him and the Plaintiff, and Execution of it in Satisfaction of the Reparations. It was objected, that neither Arbitrament, nor Accord ^{Bar by} ^{Accord.} with Satisfaction, is a Plea, when

an Action is founded upon a Deed, because Matter *en Fait* cannot be avoided by Matter in *Pais*; so when an Action is in the Realty, or mixt with the Realty, Accord with Satisfaction is no Plea, and is not a Bar for the Personalty, but it was adjudged that the Plea was good: And a Difference was taken, where a Duty accrues by a Deed in Certainty, as by Covenant, Bill or Obligation to pay a Sum of Money, there because it takes its Effence by Writing, it ought to be avoided by Matter of as high a Nature: But when no certain Duty accrueth by the Deed, but a Default subsequent gives only Damages, there Accord with Satisfaction is a good Plea. 6 Co. Blakes Cases.

Vide 2 Keb. pag. 51. The Court held, that an Accord is a good Plea to a Covenant to pay a Sum certain, or an Obligation when joined with other Things uncertain. But Concord after the Deed, cannot be a Bar to such Covenants as were not broken. 2 Rolls 187, 188.

Defendant
pleads
Payment
after the
Day, and
ill.

Moved for a Repleader in an Action of Covenant, to perform Articles and Payment of Money, whereto the Defendant had pleaded Payment

Payment of the Money after the Day, which the Plaintiff accepted; and because it was not pleaded by way of Accord and Satisfaction of the Covenant wherein Damages also are recovered, said to be ill. And this Issue being insufficient, and found for the Defendant; it's not aided by the Statute of *Jeofails*. And by *Twisden*, Payment pleaded to a single Bill, if found for the Plaintiff, he shall have Judgment; if for the Defendant, there shall be a Repleader, *sed adjournatur*. 1 *Keb.* 210. *Vide* 3 *Cro.* 455. *pl.* 2. *Goldsb.* 106. *pl.* 11.

In Covenant brought against a Lessee for Years, for not keeping the House in repair. The Defendant pleaded in Bar, that the House was burnt by Casualty; it was holden to be no good Plea in Bar, for that a Lessee that covenanteth to repair, ought to do it, be his House burnt by Negligence, or by any other Means, *Styles* 162. *Comptons* and *Allens* Case. See at the latter End of this Treatise.

Defendant pleads, the House was burnt, but repaired in convenient Time before Action brought. The Plaintiff demurred, because not

O s shewn

Bar that the House was burnt by Casualty.

Not good.

House repaired in convenient Time.

shewn by whom, not by the Defendant himself : But the Court said, that being repaired, though by a Stranger, was a good Plea ; but in Truth the Plaintiff had repaired it, and because it was a hard Case, the Court suffered him to wave his Demurrer, and take Issue not repaired in convenient Time, the House being uncovered, 2 Keb. 535.

Vide 3 Keb. 40. The like Plea and Demurrer, because the Time not put in certain, *sed non allocatur*, the first of July sufficient.

2dly. Because not said who repaired, and *per Cur'* the House being rebuilt by the Plaintiff himself, and the Defendants Executors and Administrators bound to repair it ; the Plea is ill, and must shew who repaired it ; for if the Plaintiff built it, this is no Excuse ; and Judgment for the Plaintiff.

*Bar by
Tempest.*

If a Lessee for Years covenanteth to leave Wood in as good plight as it was at the Time of the Lease, and afterwards the Trees are overturned by a Tempest, he may plead this Matter in Bar, and it shall discharge him of his Covenant, *quia impotentia excusat*

excusat Legem, 1 Co. Shelley's Case.
40 Ed. 3. 6.

Upon a Covenant in an Indenture of Lease, the Breach was for Non-payment of Rent. Defendant pleaded in Bar, that the Plaintiff entred into Part of the Land demised before the Rent was due, for which the Action was brought, and so had suspended his Rent. Plaintiff replied, the Defendant did re-enter, and so was possessed as in his former Estate. And it was held ill by the Court, because the Plaintiff did not shew that the Defendant continued the Possession till the Rent grew due, but only that he was possessed in his former Right; but the Plea in Bar was a good Plea, and Judgment against the Plaintiff, *quod nil capiat per Billam, Styles 243. Page and Parris Case.*

Vide 3. Keb. 858. In Covenant, Breach for not repairing. Defendant pleads Entry into Part and Building, &c. Plaintiff demurred.

In Covenant against Defendants, Executors to C. Lessee for Rent in Arrear in the Defendants Time. Defendants plead Assignment before Rent arrear. Plaintiff demurred ——— *Per Cur'*, though Debt may be

be in the *debet & detinet* on the Executors Possession, and then such Assignment is a good Plea. *Contra* on express Covenant where the Executor is charged as such ; but if charged as Assignee only, then the Plea were good of Assignment before Rent arrear ; and here Judgment must be *de bonis Testatoris*, therefore Judgment for the Plaintiff, *nisi*, 3 Keb. 367.

Non locavit no Plea on a Lease of a Quarry by Indenture.

In an Action of Covenant on Demise of a Freestone-Quarry to the Defendant, the Defendant covenants not to dig in any other Part of the Common, and Breach being assigned in Digging, Defendant pleads *non locavit* the Quarry *prædict* ; to which the Plaintiff demurs, the Demise being by Indenture, and the Covenant Collateral, the Plea was held frivolous, and Judgment for the Plaintiff, *nisi*, 1 Keb. 751.

Departure.

In an Action of Covenant for not repairing a House, the Defendant pleads Performance, and after rejoins, that he was ousted by a Stranger, which *per Curiam*, on Demurrer of the Plaintiff, is a Departure. Judgment for the Plaintiff, *nisi*, *Idem* 662.

Upon

Upon Covenant to pay Money, *Utlary*
Utlary a good Bar. *Idem* 324. *pleaded.*

Non infregit Conventionem is tried,
 where the House not repaired is,
Idem 575.

In an Action of Covenant for *General*
 Rent Arrear on Lease for Years: *Release of*
 The Defendant pleaded a General *all De-*
 Release of all Demands, (which *mands.*
 was made by Award on Collateral
 Differences between them) made af-
 ter the Covenant and before the
 Rent due; To which the Plaintiff
 demurred, for that the Cause of the
 Release was particular and collate-
 ral. And Judgment for the Plain-
 tiff, *nisi*, *Idem* pag. 499, 510, 511.
 2 Cro. 107, 486. *Mo.* 544. *Et vide*
Bridgman 124. & 20 *Afs.* 5.

See 3 *Keeble* 814. Release of all De- *Simile.*
 mands, Demurrer because the Re-
 lease is particular, and Bars not for
 a Covenant broken; so after Cause
 of Action by Battery, Release of
 all Demands in personal Estate no
 Bar, 3 *Keb.* 418. A Covenant bro-
 ken is not discharged by Release to
 Executor of all Demands of perso-
 nal Estate of the Testator.

In Covenant for Rent on *Nil de-* *Nil debet*
bet pleaded, the Plaintiff demurr'd *and De-*
 specially; because albeit the Cove- *murrer.*
 nant

nant doth not alter the Rent, yet *Nil debet* cannot be pleaded. But the Court said it was well enough. 2 *Keb.* 347.

Covenant, to enjoy against lawful Impediment, is broken by Entry of one *Habens jus*, 3 *Keb.* 40. So by one *Clamans jus*, and not said *Legale*, *Idem* 163. Entry *Clamans titulum*, not said by Stranger, and since the Covenant, no Breach, 2 *Keb.* 246.

Covenant
for quiet
Enjoyment,
broke by
Lease
without
Entry.

In Covenant on Indenture 8 *Octob.* 1652. of Demise to hold for 99 Years after the Death of Z. K. if three Lives so long live. Defendant pleads, That the Plaintiff *potuit uti*, and enjoy the Premises without the let of the Lessor. To which the Plaintiff replies, That the Lands are and were Dutchy Lands, and that the King for Fine and Rent had devised the Reversion to H. for 99 Years, if the three Lives live, by Reason whereof he could not enjoy. Defendant demurs, and Judgment for the Plaintiff: All this being confessed by the Demurrer, and the Plaintiff needs not shew that he entred, but the Defendant should plead it, 3 *Keb.* 162, 202.

Covenant

Covenant on two Deeds of former Husband of the Defendant's Wife, to cut twelve of the best Trees, whereby the Plaintiff hath Election: And Breach is assigned, That before the Time the Defendant cuts down some of the Trees. Defendant saith, there were sufficient standing; to which the Plaintiff demurred. *Vide 3 Keb. 477.*

Covenant, no Duty, nor Cause of Action, till broken; and therefore not discharged by release of Actions. *Allens Rep. 39. Vide antea.*

Covenant to perform certain Indentures, and to save the Plaintiff harmless; he cannot plead generally Performance of Covenants, because some may be in the Negative; and also he ought to shew how he saved him harmless. *Allen 72.*

If the Lease is not good, there's no Covenant nor Breach. *Yelv. 18, 19.*

Note, That all Covenants between the Lessor and Lessee are Covenants in Law, or express Covenants. *Vaughan's Rep. p. 118.*

An Express Covenant restrains the General Covenant in Law. *Idem 126.*

Where

Quiet Enjoyment.

Where the Covenant is to enjoy against one or more particular Men, and where against all Men. *Idem* 127.

Simile.

By a Covenant in Law, the Lessee is to enjoy his Term against the lawful Entry or Interruption of any Man; but not against *Tortious* Entries, because the Lessee hath his proper Remedy against the wrong Doers. *Idem* 118, 119.

Lessee outed by a Stranger.

If a Stranger who hath no Right outs the Lessee, he shall not bring Covenant against the Lessor, because he hath Remedy by Action against the Stranger: But if he enter by elder Title, then he shall have Covenant, because he hath no other Remedy. *Idem* 119, 120.

Outed Legally.

Though the Covenant is, That the Lessee shall enjoy against all Persons; yet he shall not have Covenant against the Lessor, unless he be legally outed. *Idem* 119, 120, 121, 123.

Strangers.

The Law will never adjudge, that a Man covenants against the wrongful Acts of Strangers, except the Words are full and express. *Idem* 121.

When

When the Covenant is to enjoy Tortious
against all Men, the Covenant is *Acts.*
not expresly to enjoy against Tortious
Acts, neither will the Law so inter-
pret it. *Idem* 123, 125.

What Collateral Matters shall be *Collateral*
implied upon a Covenant. *Vid. i Ventr. Matters.*
Rep. pag. 26, 44, 55. And see the
Table of this Treatise.

Though a Covenant be made on- *Damages.*
ly to a Man, his Heirs and Assigns ;
yet if a Breach be in his Life-time,
his Executors may bring the Action
for Damages. *Idem* 176.

That a Covenant for quiet Enjoy- *Quiet En-*
ment may bind, notwithstanding a *joyment.*
subsequent Act of Parliament to alter
the Title. *Idem* 175, 176.

In an Action of Covenant, the *Plea.*
Defendant cannot plead, That the
Plaintiff *tempore quo, nihil habuit in*
tenementis ; though such a Plea in an
Action of Debt for Rent is good:
2 Ventr. Rep. 99.

Covenant to Repair a House ; if *To Repair.*
the Lessee comes without Licence
after the Term ended to repair the
House, he is a Trespassor. *2 Rolls*
250.

Note, The Difference between *Covenants*
Covenants in Gros, and Covenants *in Gros.*
grounded upon a Lease, Covenants
having

having a Lease for their Foundation
are within the *Proviso* of the Statute
of 13 *Eliz. cap. 5.* but not in *Gross*
2 *Rolls* 401.

*Breach for
not repair-
ing.*

In an Action of Covenant to re-
pair, and so to leave the Premises
the Breach was in 60 Rood, &c.

Bar.

Defendant pleads, that one Barr
was pulled down by the Plaintiff
Consent; and as to the rest, that
they were repaired and so left: To
which the Plaintiff demurred gene-
rally; *per* Chief Justice, he should ei-
ther have taken Issue, That he re-
paired the Particulars; or say, They
were not in Decay, *modo & forma*
And the Parties agreed to take Issue
on one of the Points. 2 *Keb.* 798.

Con

Concerning the late Acts of Parliament to prevent Destruction of Houses by Fire, as also concerning new building of Houses within the Bills of Mortality.

BY Stat. 6 Annæ. cap. 21. For preventing of Mischiefs that may happen by Fire; it is enacted, That all Houses built on old or new Foundations within the Bills of Mortality, shall have Party-Walls between, of two Bricks thick in the Cellar and Ground-Stories, and thirteen Inches thick upwards, from the Foundation, and eighteen Inches above the Roof, and no Cornish of Wood shall be made in such new Houses; but Front and Rear Walls of such new Houses shall be built of Stone or Brick, to be carried two Foot and an half above the Garret Floor, and coped with Stone or Brick: And if any Houses shall be built in the said Places, contrary to the Intent of this Act, then the Owner and Head Builder undertaking such Building, shall forfeit 50 *l.* one Moiety to the Informer, the other
to

to the Poor, of the Parish, to be levied by Warrant and Distress, &c.

*Proviso between
Landlord
and Tenant.*

That no Action shall be maintained against any in whose House or Chamber any Fire shall accidentally begin, provided that nothing therein shall make void any Agreement between Landlord and Tenant. Also by the said Act, That if any Servant through Negligence, shall cause any House or Out-house to be fir'd, such Servant being thereof convict by Oath⁷ before two or more Justices of Peace, shall forfeit 100 *l.* unto the Church-wardens of the Parish, to be distributed amongst the Sufferers, as to the Church-wardens shall seem just: Upon Non-payment, such Servant shall be committed to some Work-house, by Warrant of one such Justice, for eighteen Months to be kept to hard Labour.

There is also a Proviso, That so much of this Act, as relates to the Indemnity of those, in whose House any Fire shall begin, shall continue for three Years, and from thence to the End of the next Session of Parliament.

But

But by an Act made 7 *Ann.* For making the former Act more effectual, It is enacted, that the former Clause concerning Houses to be erected and built either upon old or new Foundations, was not intended or shall be construed to extend to Houses to be built upon any Part of *London-Bridge*; but that the same may be erected and built with Wood and Timber, as hath been hitherto used.

And that all Houses to be built upon old or new Foundations, in any Place about *London* and *Westminster*, or Places comprised within the Weekly Bills of Mortality, (except Houses on *London-Bridge*, and the River of *Thames* below *Bridge*) shall have Party-Walls between House and House, wholly of Brick or Stone, except Door-Cases, Windows, Lentils, Breast-Summers, Story-Posts and Plates, of two Bricks thick at least in the Cellar, and one Brick and an half thick upwards to the Top of the Garret-Floor; and all Gable-ends to be one Brick in length, and eighteen Inches above the Roof; and to have no Beams or Rafters lie or stand, or be in the Brick-Works of the Gable-ends.

That

That all Party-Walls hereafter to be built, shall be built nine Inches on each Man's ground, whether the old Party-Wall be Brick, Stone or Timber ; and that the first Builders shall have Power to pull down the same, and build up the new Party-Wall as aforesaid, and be paid by the Owner of the next House after the Rate of 5 *l.* per Rod, as soon as he shall have built the said Party-Walls : And for all Houses hereafter to be built, that will not yield the Rent of Twenty Pounds *per Ann.* more than the Ground Rent, to be left to the Discretion of the Builders, provided that all Party-Walls for the same be built with Brick.

That all Chimney-Jambs and Backs, shall be nine Inches thick from the Cellars to the Roof ; and all Withs the inside of such Chimnies, four Inches and an half in Breadth ; all the Funnels plaistered or pargetted the inside from the Bottom to the Top ; all Chimneys to be turned or arched under the Hearth with Brick (except upon a Ground-Floor) ; and that no Timber shall lie nearer than five Inches to any Chimney, Funnel or Fire-Place ; and all Mantles between the
Jambs

Jambes arched over with Brick ; and no Wood or Wainscot shall be plac'd or affix'd to the Front of any Jamb or Mantle of any Chimney, nearer than five Inches from the inside of such Jamb or Mantle ; and that all Gable-ends, called nine Inches thick in Party-Walls, be rendred on the ruffest Side ; and that all Stoves and Boilers, Coppers and Ovens, that shall be set up with Brick or Stone, shall not be nearer than nine Inches at the least to the adjoining House, and no Timber to lie nearer than five Inches to any Fire-Place or Flew.

That no Brick or Stone-Work in the Fronts, Party or Partition-Walls of any House, Tenement or other Building whatsoever, that shall be erected upon any new or old Foundation within the Cities of *London* and *Westminster*, or their Liberties, shall be supported, depend or bear upon any Sort of Timber or Wood-Work, (excepting upon Piles and Planks, where they are absolutely necessary for Foundations in marshy and unsound Ground, and excepting likewise all Houses upon *London-Bridge*) upon Pain that every Person so offending, shall for every such Offence

fence suffer Imprisonment for three Months without Bail or Mainprife.

That no Door-Frame or Window-Frame of Wood, to be used in any House or Building, which shall be erected upon old or new Foundations, within the aforesaid Cities of *London* and *Westminster*, or their Liberties, (except Houses on *London-Bridge*, and on the River of *Thames* below *Bridge*,) shall be set nearer to the Out-side Face of the Wall than four Inches.

F I N I S.

THE TABLE.

Actions. *Vide* Assigns, Covenants,
Conditions, &c.

A CTIONS for Arrears af- ter Entry	Page 94
Action for hindring to take away Emblements	138
Action in Waste, how it lies	205
By whom it must be brought	206, 207
Who must join in the Action	207
Where it lies after a Release	211

Actions on the Case.

Actions on the Case between Farmers, Tenants, and others, relating to Torts and Nuisances, &c.	276
For stopping up a Way to House or Land	<i>Ibid.</i>
For turning off Water	<i>Ibid.</i>
For drowning anothers Ground	<i>Ibid.</i>
For diverting Water from a Mill	277
P	For

The TABLE.

For disturbing his Walk or Foldage	Page 277
For not folding his Sheep	<i>Ibid.</i>
For disturbing him in his Common	<i>Ibid.</i>
For digging a Pit there	<i>Ibid.</i>
For inclosing the Common 278. See	<i>Tit. Common.</i>
For disturbing a Common Watering-Place	278
For ousting the Lessor's Executor	<i>Ibid.</i>
For hindring the Lessor to view.	<i>Ibid.</i>
For Lessee for Life against Lessee for Years for Waste	<i>Ibid.</i>
So for Lessee for Years against Lessee for Years	279
Where the Lessor neglects to pay Subsidies	<i>Ibid.</i>
Against Lord for cutting down his Copyholder's Trees	<i>Ibid.</i>
For refusing to grind at the Lord's Mill	280
For Damage by Fire	<i>Ibid.</i>
For not repairing Fences	<i>Ibid.</i>
For not scowring Ditches	<i>Ibid.</i>
For not repairing Sea-Banks or River-Banks	281
For not repairing a High-Way or Private-Way	<i>Ibid.</i>
For not repairing his House	282

For

The T A B L E

For Disturbance by an Upper-Room

Page 282

For Damage by an Under-Room

Ibid.

For over-building anothers House, *Ib.*

For stopping Lights and Windows 283

Simile by Walls, Wood-piles, &c. *Ibid.*

How such Wrong may happen to be

purged

284

For Nufances by Dye-Houses, &c. *Ib.*

By setting up a Pig-sty

Ibid.

By a Chandlers Shop, &c.

285

By throwing dead Carcases, &c. in-

to anothers Ground

Ibid.

By suffering Tythes, Hay, &c. to

lie too long on the Place where

bought, &c.

Ibid.

Proviso for saving Actions between

Landlord and Tenant in the late

Act, to prevent Destruction of

Houses by Fire, &c. 307, 308, &c.

Amends. *Vide Distress.*

Assignees. *Vide Covenants, Rent, &c.*

How they are bound by, and liable

to the Covenants of the Lessee or

Assignor, &c.

75, 76, 77

Upon an Assignee's being evicted

77

The TABLE.

Actions by Assignee of Assignee, Executors of Assignee, &c.	Pag. 78
How he must discharge himself of the Rent	<i>Ibid.</i>
Notes in Nature of Inland Bills how assignable over	270, 271
Assignee tho' refused at one Time, may be accepted another Time	106
Assignment of Hedge-Boot, &c.	89
Assignment by Tenant for Years, who dies	105
<i>Simile</i> by his Executors, &c.	<i>Ibid.</i>
	<i>Vide</i> 78
Reversion not assignable without Deed	107

Attornment.

Attornment how dispensed with by the late Act of Parliament	107
--	-----

Abowry. *Vide* Distresses and Replevin.

Bargains, &c.

B Argaining, buying and selling Goods and Chattels, according to the Act of 29 Car. 2 cap. 3.	264, 265, &c.
Concerning Notes promising Pay- ment	270
	How

The TABLE.

How they are assignable over, &c.
Page 270, 271

Bonds.

Bonds to perform Covenants concerning them	90, 91.
For Rent	90
<i>Simile</i> for Repairs	<i>Ibid.</i>
Not forfeited where the Rent is in suspense	91, 92

Chancery.

R ELIEF therein for Mortgagees	56
Waste relieved in <i>Chancery</i> .	79
Not against a voluntary Act	<i>Ibid.</i>
For Relief in <i>Chancery</i> against Deeds and Leases	80

Commencement and Determination of Leases, &c.

How the Commencement and Determination of Leases ought to be
74, 126, 130

Upon a Lease from Year to Year 74
Voidable Leases, how determined or continued. *Ibid.*

Continuance of the Term, tho' *rei veritate* determined. 75

The TABLE.

<i>Simile</i> of the Grant of next Avoid- ance of an Advowson	Page 75
Lease determined by Husband's Death, tho' limited over to the Wife	124
How to commence, if <i>Habendum</i> be <i>a Die Datus</i> , or a <i>Confectione Inden- turae</i>	125
Further concerning the Commence- ment of Leases	126
Where not mentioned when it shall begin	127
How, if the Date be impossible, <i>Ibid.</i>	
If it be without Date	<i>Ibid.</i>
If from the End of a Lease mis-re- cited	<i>Ibid.</i>
Upon a Lease for Life made by Pre- bendary	<i>Ibid.</i>
Made to commence upon Failure of Issue	128
Where one Lease is made to Day, and another the next Day, of the same Lands	<i>Ibid.</i>
Second Lease to commence upon Surrender of the First, <i>Ibid.</i> &	129
Where made to commence after ano- ther, and there is none	<i>Ibid.</i>
To commence upon an Incertainty, how	<i>Ibid.</i>
Upon Nomination of another	130

Upon

The TABLE.

Upon Payment of a Sum of Money
Page 130

By a Parson of his Glebe, terminates with his Life *Ibid.*

For 100 Years, if *A.* and *B.* live so long 131

By a Joint-Tenant to begin after his Death 133

Common. *Vide* Tenants.

For the Doctrine of Common between Landlord and Tenant, see Chapter the 7th throughout, viz.

Of the several Sorts of Common 219, 220, &c.

Of the Lord's Common, and who shall have it 224, &c.

Of Common Appendant, and for what Cattle, &c. 220, 226, 227, &c.

Of Common Appurtenant, and how it may be used, &c. 220, 240

Of Common for Cause of Vicinage, and how it may be used 221, 222, &c.

Of Common in Gross, how it may begin and be used, &c. 219, 240, &c.

Of Common without Number 224, 231, 232.

The TABLE.

Concerning the Seisin of Common, how to be obtained	Page 247
Concerning what Things a Com- moner may do, &c.	249, &c.
Concerning the Approvement of Common	258, &c.
Of the Admeasurement of Common	262

Conditions.

Condition not to alien	93
Entry for Condition broken	94
Condition not to alien	<i>Ibid.</i>
Upon Condition that if the Lessor alien, the Lessee shall have Fee	96
Where upon Condition broken, Exe- cutors may enter	Page 96
<i>Simile</i> where upon Reservation of Rent, the Heir may enter	123
Condition for Lease to be void, if one of Joint-Tenants died	97
Where the Devise of a Lease may be Breach of Condition	<i>Ibid.</i>
Who may take Advantage of a Con- dition	<i>Ibid.</i>

Copyholders. *Vide* Fines, Forfeitures, and Tenants by Copy of Court-Roll.

Whether Copyhold-Land be with-
in

The TABLE.

in the Statute of Limitation of
Entries Page 37

Corn and Crop.

Concerning a Tenant's sowing and reaping	18, 19, 137
Where the Landlord shall have it	138
Concerning Roots, Hemp or Flax, &c.	<i>Ibid.</i>
Where the Executors shall have it, <i>Ib.</i>	
How, upon a Tenant's Estate uncertain	18, 139
The Reason why Tenant of uncertain Estate shall have it	140
Where the Lessee or Surrendree shall have it	139
Where Lessor of Tenant for Life shall have it.	<i>Ibid.</i>
Where for his Benefit of whose Maintenance the Corn came	140
For Reversioner of Tenant for Life	<i>Ibid.</i>
Where the Remainder-Man upon a Devise, and not the Executors.	141
Where the Executors of the Husband that sowed, and where the Wife,	141
Where the Husband of Tenant in Dower shall have it	<i>Ibid.</i>
Where Lessee for Years of the Wife's Lands, so of Tenant by the Course shall have it	<i>Ibid.</i>

The TABLE.

For whose Benefit upon Ground, sown by a Woman <i>durante viduitate</i> , who takes a Husband	142
How after Husband's Death upon Lease of his Wife's Lands	143
Upon a Recovery by Title Para- mount, who shall have it	<i>Ibid.</i>
Where the Heir shall have it	<i>Ibid.</i>
Where the Desseisor shall	144
Where the Widow in Dower shall	<i>Ibid.</i>
Where her Executors shall have it.	<i>Ib.</i>
Where Tenant in Tail gives it away, and dies before Severance	<i>Ibid.</i>
Where such Tenant gives away a Tree growing upon the Land	145
Where Tenant in Fee-Simple does the like	<i>Ibid.</i>

Covenants. *Vid.* Assignees, Rent, &c.

Upon Lessees covenant to build, how his Assignee shall be liable	75, 76
When the Covenant extends to a Thing in being, and is annexed to the Thing demised, &c.	76
Upon a Covenant to repair, Af- signee bound	<i>Ibid.</i>
Where Covenantor bound, but not the Assignee	<i>Ibid.</i>
Upon a Covenant to deliver a Stock of Cattle, &c.	77

The TABLE.

Writ of Covenant upon Assignees being evicted.	Page 77
32 H. 8. 24. Extends not to Collateral Covenants	78
Actions of Covenant by Assignee of an Assignee, &c.	<i>Ibid.</i>
Covenant for Lessee to have House- Boot and Fire-Boot upon the Lease of a House and Wood	80
How a Covenant to permit, &c. shall relate to the Assigns	84, 85
Upon a Covenant to build, and he builds more, &c.	85.
Upon a Covenant not to inclose	<i>Ibid.</i>
Latter Covenant by second Inden- ture, no Bar	<i>Ibid.</i>
Action of Covenant upon stopping Water-course	<i>Ibid.</i>
Simile upon destroying Estovers	<i>Ibid.</i>
Covenant of Testator broken	86
Not against Grantor for not repair- ing	<i>Ibid.</i>
How by an Assignee of Reversion, tho' not named.	<i>Ibid.</i>
How by Grantee of a Reversion	<i>Ibid.</i>
What Words amount to a Covenant in a Deed.	<i>Ibid.</i>
A Proviso may	87
That his Under-Tenant should not Dig, &c.	<i>Ibid.</i>
Where Covenant goes with the Land	<i>Ibid.</i>
	Cove-

The TABLE.

Covenant if Rent be behind, Lease to be void	Page 87
Upon a Covenant to support, uphold, &c. when Action to be brought	88
How against Assignee, tho' not named, for not repairing	88, 89
Lessee takes an old ruinous House, and Covenants to leave it in Repair	89
Upon a Covenant to leave a Wood in as good Condition, &c.	<i>Ibid.</i>
Lease with Warranty amounts but to a Covenant	91
Where Covenant lies against Lessee, after Acceptance of Rent from his Assignee	106
Modern Cases adjudged in Covenant	286
Concerning quiet Enjoyment	<i>Ibid.</i>
Of Covenants Affirmative and Negative	<i>Ibid.</i>
By Deed Poll sufficient	287
Concerning Words of Covenant	<i>Ibid.</i>
Conditional Words concerning them	<i>Ibid.</i>
Where the Cause of the Covenant must be first performed	288
Covenant must be of lawful Matter, <i>Ib.</i>	
Covenant, how taken against Covenantor	<i>Ibid.</i>
Several other Observations relating to Covenants	289, 290, &c.
Some resolved Cases as to Pleadings in	in

The TABLE.

in Covenant upon Leases 295,
Page 296, &c.

Customs.

<i>Properties incident for a good Custom</i>	23
In Customs, there is <i>User, Non-User,</i> <i>Abuser and Interuser</i>	<i>Ibid.</i> & 24
Customs must be reasonable	25
How at the Will of the Lord	28
Concerning Tenants Services, &c.	26
Concerning Sole-Feeding	27

Distress. *Vide* Replevin, Rescous, &c.

D istress for Rents, where Tenant for Years grants Part of his Term, 101. <i>Vid.</i> 171, 178, &c.	
Distress by Custom, concerning it.	149
Of putting Distress in Pound-Overt	150
Of what Things Distress may be	<i>Ib.</i>
General Rule of Things Levant and Couchant	<i>Ibid.</i>
What Things may not be distreined for Rent	151, 152
Of Strangers Beasts coming by Escape	153, 165
For Amerciament in a Leet	153
Of Goods or Chattels	154
Of putting Cattle distreined in his Yard or Close	<i>Ibid.</i>
In another Man's Yard or Close.	156
	In

The T A B L E.

In the Place where <i>Damage feasant</i>	Page 154
Within the County and within three Miles	155
Of tendering Amends for the Damage	<i>Ibid.</i> & 163
If the Cattle impounded die there	150, 154, 156
Replevin upon a Distress	156.
	<i>Vide</i> Replevin.
<i>Parco Fracto</i> upon a Distress	156, 157
Of two Distresses for one Rent	<i>Ibid.</i>
Where no Action against the Lord, tho' nothing due	<i>Ibid.</i>
Where he may distress in the House, tho' he might in the Land	158
Where for Damage to the Soil	165
How Distress may be for a Rent-charge	158, & 161
Concerning excessive Distress	158, 159
Distress of Common Right	160
Not for Debt, &c. or Services uncertain	<i>Ibid.</i>
Where Incertainty may be reduced to Certainty	<i>Ibid.</i>
Where for Surplusage of Rent, having gained Seisin thereof	161
Where for <i>Nomine Panæ</i>	162
No working an Estray or Distress.	<i>Ibid.</i>
Where a Novel Disseisin for want of a Distress, &c.	<i>Ibid.</i>
	Di-

The TABLE.

Distress for Herriots	Page 163, 165
Distress for surcharging Common.	164
Distress made by Executors, &c.	<i>Ibid.</i>
Distress of Beasts escaping	165
Of Cattle depasturing	<i>Ibid.</i>
Of Cattle driving to a Market	167
Cause of Distress, where to be shewn	166
Where not for Rent reserved upon a Feoffment	168
Where there ought to be a Clause of Distress	<i>Ibid.</i>
For Rent reserved at two Feasts.	<i>Ibid.</i>
How hindring a lawful Distress may cause Homicide	167
Not where a Reversion is determined	169
Upon an Assessment by a Town.	<i>Ibid.</i>
Where by a Grant of the Fealty it becomes a Rent-Seck	<i>Ibid.</i>
Where the Fealty cannot be severed from the Reversion	170
Upon an Assignment of Rent in Partition or Dower	<i>Ibid.</i>
Where sufficient Amends are tendered	<i>Ibid.</i>
Where preventing a Distress amounts to a Disseisin	100
How upon the Act 2 W. & M. Sess. 1. cap. 5. For enabling the Sale of Goods distrained for Rent	171, 172, &c.

How

The TABLE.

How upon the Act made 8 Annæ Regina, *For the better Security of Rents, and to prevent Frauds committed by Tenants* Page 178, 179, &c.
 Concerning a Second Distress for the Residue of Arrears, upon the Stat. 17 Car. 2. cap. 7. See *Tit. Refcous and Replevin.*

Ejectment.

BY one Joint-Tenant against another 109

Entry.

Where the Party to whom the Rent is reserved, may not enter for the the Condition broken Page 98
 Where a Tenant may grant away his Interest before Entry 103
 Where Entry, &c. will extinguish the Rent 117

Estovers. *Vide* Common, Trees, Waste.

Estovers, how appurtenant to the Land, and shall run with the same 77, 103
 Upon a Covenant to have Houseboot and Fire-boot. 80
 Upon

The TABLE.

Upon Lessors destroying the Estovers	85
Of the Several Kinds of Estovers;	
<i>viz.</i> 1. House-boot and Fire-boot.	
2. Plough-boot. 3. Hedge-boot	
or Hay-boot.	145, 146
Estovers, Definition thereof	146
Estovers wasted by Landlord.	149, 280

Exception.

Lessors excepts a Wood: The Law gives him a Way to it	104
---	-----

Extinguishment. *Vide* Rent.

Extinguishment of Rent	117
Extinguishment of the Duty of Fencing Closes	<i>Ibid.</i>
Where of Rent by a Release of all Demands	118
Where by a Recovery, the Power to make a Jointure is extinguished	<i>Ibid.</i>

Fines. *Vide* Tenants by Copy.

F INES at the Will of the Lord	24
Fines by Husband and Wife, to make Discontinuance	66

Firmors

The TABLE.

Firmors or Farmers. *Vide* Actions.

Concerning him and his Farm,	Page 57, &c.
None to take above two Farms	272
How to be taken by Spiritual Persons	<i>Ibid.</i>
Forfeitures by them for taking Parsonages or Vicarages.	273
Sheep-Keepers and Sheep-Feeders, concerning them	<i>Ibid.</i> & 275
Beast-Feeders, &c.	275
<i>Several Actions on the Case, necessary to be known by all Farmers, &c.</i>	276, 277, &c.

Forfeitures. *Vide* Tenants by Copyhold, Waste, &c.

Forfeitures by Tenants of Copyhold, &c.	25, 27, 30
Advantage to Feme-Copyholder, tho' Husband makes a Forfeiture.	33
Copyholders Forfeiture by committing Waste	32
Forfeited Estate revived	34
Forfeiture by deferring Services	36
Forfeitures for taking to Farm a Vicarage or Parsonage	273

Grants :

The TABLE.

Grants :

TO whom to be made Page 99
How to be made in Remainder

Ibid.

Where not without Recompence. *Ibid.*

Where the Intent of the Grantor
shall be void *Ibid.*

Habendum. *Vide Commencement.*

Copyholders Wife not named till
after the *Habendum* 29

Intent.

HOW the Intent of the Party
shall be void to all Intents 98

Joint-Tenants. *Vide Tenants.*

Several Matters relating to them,
from 41 to 46, &c.

Lands.

WHAT are comprehended
under the Name Lands. 80
Lands pass not upon a Lease of a
House, with the Appurtenances,

108

Leases.

The TABLE.

Leases.

L EASES Parol and by Indenture	Page 13, 14, 83
Further Concerning Leases. <i>Ch.2. p.57</i>	
Lessor and Lessee, Firmor or Farmer	<i>Ibid.</i>
Of ancient Rents reserved on Leases	59
Of what Lands, &c. Leases reserving Rents ought to be made.	<i>Ibid.</i>
Leases for Years are Chattels, and go to Executors, if not otherwise disposed of	60
Long Leases concerning them	61
Leases may not be entailed, <i>Ibid.</i> & 131	
If it come to be limited in Tail, &c.	61
Who may make Leases	<i>Ibid.</i>
Leases by Tenant in Tail	<i>Ibid.</i>
By Husband of his Wife's Land,	62.
By Bishops, &c. <i>Ibid.</i> See after.	
Leases by Statute-Law, how limited	63.
By Tenant in Tail, &c.	<i>Ibid.</i>
To what Leases <i>Stat. 32 H. 8.</i>	28.
shall not extend	<i>Ibid.</i>
By the Husband of the Wife's Land,	64
Leases reserv'd out of the Statute,	65, 66
By Bishops, &c.	66
By Masters of Colleges, Dean and Chapter, &c.	67
Leases	

The TABLE.

Leases of Benefices or Ecclesiastical Promotion, &c.	Page 68
By Parsons or Curates	69
Rent upon Leases by Colleges	70
Leases made void by Stat. 18 Eliz. II.	71
How the Ordinary must grant Sequestration against an Incumbent offending against 13 Eliz. 20.	72
Leases confirm'd by 12 Car. 2. c. 31.	73
Leases of the Dutchy of Cornwall	<i>Ibid.</i> & 134
Of the Commencement and Determination of Leases,	74 & 126.
<i>Et vide</i> Commencement.	
Lease from Year to Year, &c.	74
Leases made to hold at will	83
Voidable Leases how to be made void, 74. Vacated by Order for cancelling	135
Lease revived by Re-entry of Tenant	133
Lessee, Acts done by him, 75. <i>Vide</i> Covenants.	
Leases made by Durefs how voidable	135
Lease of Land and Stock of Cattle	77, 113
Concerning Leases by Baron and Feme	79
Lease of a House and Wood, with House-boot, &c.	80
Lease	

The T A B L E.

Lease at Will howdetermined,	Pag.80
Lease for a Year to enable a Release	81
Leases for Years upon Lives, how determined	<i>Ibid.</i>
Where Part for Life and Part for Years	<i>Ibid.</i>
Reading of Leases, &c. before Sealing	135
Sealing Leases, concerning it	82
Variance in Leases, concerning it.	<i>Ib.</i>
Lease executed by Livery and Seisin	95
Lease to Joint-Tenants, to be void if one died.	97
Lessors Intent on a Lease to another and his Heir avoided	108
Where Lessor takes a Lease of his own Land	<i>Ibid.</i>
Leases revived and confirmed by Acceptance of Rent, &c.	115, 116
Lease to Husband with Limitation over to Wife	124
Lessee for Years makes a Feoffment with Livery	<i>Ibid.</i>
Where more Acres than named will pass.	<i>Ibid.</i>
Lease by Parson of his Glebe-Lands	130
By an Infant at 17, of Lands holden in Soccage	131
Lease avoided by a Widow	<i>Ibid.</i>
<u>Licence</u>	

The T A B L E.

Licence to enter and occupy,	Pag. 131
Lease for Life, and mentions not whose Life, how to be taken	132
Leases by Joint-Tenants	<i>Ibid.</i>
Leases how to be worded, to give present Possession so as to bring Trespafs	134
Lease lost, yet the Term of Years saved	135

Licence.

Licence to put in Cattle, by one that has only a Third Part	167
Entry to fetch out Cattle without Licence	<i>Ibid.</i>

Livery and Seisin.

Lease executed by Livery and Seisin	95
Livery made upon a Feoffment by Lessee	124
Livery and Seisin by Parol	125
Upon a Feoffment, <i>Habendum a Die Datus</i>	<i>Ibid.</i>
<i>A die consecutionis</i> upon a Lease for Life, and Lessor makes Livery a Month after	<i>Ibid.</i>
Livery void where a Lessee is upon Part of the Premises	126

The TABLE

Mines.

MINES in Lands let by Lease,
concerning them Page 134

Mortgages.

Some Observations concerning them,
and Relief against them 55, 56

Occupancy. *Vide* Tenants.

VIDE *ibid* & *ibid*

Parceners and Partition.

Vide Tenants.

Several Matters relating to Par-
tition 39, 45, 52

Re-entry.

WHERE Re-entry is preven-
ted by Distress for Rent 122
Re-entry upon a Covenant not to
alien 123

Re-entry

The TABLE

Re-entry by Heir upon Condition of Rent broken	Page 123
General Prohibition not to enter another's Possession	166
Exception to fetch out Cattle run- ning into the Ground	167

Remainders.

Remainders limited and how	28
Entry by Remainder Man upon Copyholders being attainted, &c.	29
Surrender by such Remainder Man	<i>Ibid.</i>
Remainders void in Law	98

Rents.

Ancient Rents reserved upon Leases	59
What Rents may, and of what Lands and Tenements	<i>Ibid.</i>
Rent, tho' not good by Way of Re- servation, yet may by way of Contract	60
Every Quarters Rent, a several Debt	<i>Ibid.</i>
Payable by an Executor before Bonds	<i>Ibid.</i>
For the Moiety of Rent, against an Assignee	<i>Ibid.</i>

Q

Where

The TABLE.

Where the Rent goeth to the Executors	Page 84
Where Rent is not acquitted by a Release	96
Concerning a Rent of 10 s. granted by two Tenants in Common	103
That the 10 s. shall be several	<i>Ibid.</i>
Of Rent reserved by two Copartners	104
Concerning Apportionment of Rent	<i>Ibid.</i> & 117
Rent accepted from Assignees	105,
	106
Caution concerning Payment of Rent	110
Concerning the legal Day of Payment	<i>Ibid.</i>
Where 'tis 15 Days after any of the said Days	<i>Ibid.</i>
Where the Rent will fall to the Heir	
(See after)	111, 121
Where Landlord is to be sought after to receive the Rent	112
Where he need not pay Rent without an Acquittance	<i>Ibid.</i>
Where by an Acquittance the Arrearages are discharged	113
Of Payment before Sun-set	<i>Ibid.</i>
Payment of Tythe for Glebe-Lands	<i>Ibid.</i>
Rent reserved upon a Stock let out, when payable	<i>Ibid.</i>
	Of

The T A B L E.

Of Rent reserved by Joint-Tenants	Page 114
Rent revived upon Death of Tenant in Dower	<i>Ibid.</i>
Where a Successor of a Parson, &c. accepts Rent reserved by his Predecessor	115
Upon Acceptance by a Bishop, Lease is confirmed	<i>Ibid.</i>
So where Second Husband accepts the Rent	<i>Ibid.</i>
<i>Simile</i> upon Acceptance by Wife, <i>Ib.</i>	
Rent reserved by Tenant for Life determined	<i>Ibid.</i>
<i>Simile</i> by a Tenant in Dower	116
Where the Acceptance renews a Lease for Life	<i>Ibid.</i>
Rent extinguished by Entry, &c.	117
Where revived, and where not	<i>Ibid.</i>
Where Duty of fencing Closes is extinguished	<i>Ibid.</i>
Of the Demand and Tender of Rent, and the Time when	118, 119
Reservation of Rent how to be made	120
Rent how transferred to an Assignee	<i>Ibid.</i>
Where the Rent shall go to the Heir for the apparent Intent	121
Where the Rent is reserved generally, and not said to whom,	<i>Ibid.</i>

The TABLE.

Where the Rent is reserved to the Son, and not as Heir	Page 122
Rent reserved upon a Demise, when the Reservation shall happen,	<i>Ibid.</i>
Rent distreined for, prevents Re-entry of Landlord	<i>Ibid.</i>
Reservation upon a Rent-Charge against Sureties and Pledges, is void	194
Where the Rent upon a Gift in Fee of Lands is reserved to a Stranger	97

Repairs. *Vide Covenant and Waste.*

How the Tenant may cut Timber to repair upon the Landlords Covenant	206
Of the Writ <i>de Reparatione faciendum</i> , between Joint-Tenants	<i>Ibid.</i>

Rescous. *Vide Distress.*

Rescous, what it is	187
Rescous, where Goods are distreined without Cause	166
Rescous, where no Rent is due,	188
Where he tenders his Rent to the Lord	<i>Ibid.</i>
Where the Lord distreins in the High-way	<i>Ibid.</i>

Where

The TABLE.

Where he distreins <i>Averia Carrucæ</i> , or Things not distreinable,	Page 188
Where the Lord may follow with fresh Suit	189
Where the Lord hath not Sight or View	<i>Ibid.</i>
Where he hath View, and distreins out of his Fee	<i>Ibid.</i>
Rescous retorn'd and void	<i>Ibid.</i>
Where the Distress is intended for <i>Damage feasant</i>	<i>Ibid.</i>

Replevin. *Vide* Distress.

Sheriffs Deputies for Replevin, by <i>Stat. 1 & 2 P. & Ma. c. 12, &c.</i>	190
<i>Replegiari facias</i> at Common Law	191
Tenant is Plaintiff	<i>Ibid.</i>
<i>Withernam</i> , where it may be had,	<i>Ibid.</i>
Replevin to Bayliff of a Franchise	192
Where the Sheriff may enter,	<i>Ibid.</i>
Where Property is claimed by Defendant, &c.	<i>Ibid.</i> & 193, 194
<i>Recordare</i> to remove the Plaint,	193
<i>Simile</i> by a Pone	194
Reservation for Distress irrepleviable, is void	<i>Ibid.</i>
Several Men may not join in Replevin	<i>Ibid.</i>
Q 3	Upon.

The TABLE.

Upon a Distress driven into another County	Page 195
Of dead and living Cattle	<i>Ibid.</i>
By Husband alone	<i>Ibid.</i>
Of Declaration in Replevin	<i>Ibid.</i>
Replevin against the Lord, tho' the Cattle be come back	<i>Ibid.</i>
Caution of giving Instructions in Replevin	<i>Ibid.</i>
Avowry in Replevin, concerning it	196
Making Conusance as Bailiff	<i>Ibid.</i>
Manner of Avowries	<i>Ibid.</i>
Plaintiff's Advantage	<i>Ibid.</i>
Costs and Damages for the Defendant	198
Where Part of the Rent is not due	<i>Ibid.</i>
For Rent and <i>Nomine Pœnæ</i>	<i>Ibid.</i>
Bar to an Avowry	<i>Ibid.</i>
That they were the Beasts of a Stranger	199
Arrearages of Rent lost by the Lord	<i>Ibid.</i>
If the Plaintiff in Replevin be non-suit, barr'd or overthrown.	200
<i>Vide</i> Page 183, &c. for Stat. 17 Car. 2. c. 7.	

Settin.

The TABLE.

Seisin. *Vide* Livery.

WHERE the Lord hath gained
Seisin for more Rent than
due Page 161

Seizure.

By a Lord until Tenant come to be
admitted 29
By Lord, in what Cases, &c. 28

Surrenders. *Vide* Tenants.

By Copyholder in Consideration of
Marriage or Payment of Money 26
By a Remainder-Man where nothing
passes 27
By him in Remainder of Copyhold-
Lands 29
Into the Hands of two Copyholders 30
By an Attorney of a Copyhold E-
state *Ibid.*
By Copyholder for Life, and Copy-
holder in Fee 31
By Infant Copyholder *Ibid.*
By Husband of Woman Copyholder,
Ibid.
By Heir, to a Stranger after Entry
and before Admission 32
By Q 4

The TABLE.

By Copyholder after Forfeiture,	Page 32, 34
Where a new Lease amounts to a Surrender in Law	104
If Surrender can perfect without Acceptance, &c.	129
Lessee cannot Surrender before his Term begin	105

Tenants and Tenures.

THE several Kinds thereof,	Pag. 1, 2, 3
Tenants in Fee-Simple	4
Incumbrances and Forfeitures of Fee-Simple Estates	5
Tenant in Fee-Tail	6
General and Special	<i>Ibid.</i> &c.
Special with Limitation	7
Tail Tenures becoming extinct,	8
Tail-Tenures, Incumbrances,	<i>Ibid.</i>
Entry by the Donor.	<i>Ibid.</i>
Tenant in Tail after possibility of Issue, extinct	9
Who may be so	<i>Ibid.</i>
Tenant by the Courtesie of England	10, 39
Tenant in Dower	10
Dower at Common Law	11
Dower by the Custom	<i>Ibid.</i>
Tenant for Life	12

Livery

The TABLE.

Livery and Seisin upon Lease for Life	Page 15
Reverter of Estate after a Partition between Tenants for Life	132
Tenant for Years by Lease, 13, &c.	
By Lease Parol	14
When Lease for Years takes Right	17
Tenant at Will	<i>Ibid.</i>
Tenant at Will if he sows shall reap,	18
Not so in Tenant for Years	19
Tenant at Will not bound to Repairs	20
If Tenant at Will commits voluntary Waste	<i>Ibid.</i>
Tenant of Sufferance	<i>Ibid.</i>
Tenant by Copy of Court Roll,	21
How such Tenant may or may not alien his Estate	21
Of the Properties of a Custom, and the several Usages thereof.	23
Copyholder fined at the Lord's Will	24
His Admission without Fine	<i>Ibid.</i>
& 30. See after.	
Work-Days of such Tenants	24
Interuser for Rent	<i>Ibid.</i>
Deferring of Services	36
Abuser by Cattle, (See <i>Tit. Common.</i>)	25.
Prescription by Copyholder to hold by Fealty	26
By the Lord not to hold his Court	<i>Ibid.</i>
Sur-	

The TABLE.

Surrenders by Copyholder in Consideration of Marriage or Payment of Money,	Page 26
By an Infant, by an Husband, &c.	30, 31
Forfeitures by Copyholders	27
Custom for Copyholders to have the sole Feeding	27
To licence others to put in their Beasts, 28. For these, See more in the Doctrine concerning Common.	
If a Copyholder be attainted or convicted of Felony	29
Copyhold-Land of the Tenure of Burrough <i>English</i> .	31
If Copyholder cut Trees	32
Copyhold extinguished	<i>Ibid.</i>
Advantage to Feme-Covert Copyholder	33
If Copyhold surrendred, be determined by the Lords making a Lease, <i>Ibid.</i>	
Copyhold Estate forfeited and revived	34
Copyhold by Escheat re-granted,	34
That Fines of Copyholders ought to be reasonable	35
That the Time to pay them ought to be reasonable	<i>Ibid.</i>
Fine not due until Admittance,	<i>Ibid.</i>
What Fine	36
Where a Fine certain is tendred,	<i>Ib.</i>
Copyhold-	

The TABLE.

Copyhold-Land within the Statute of Limitation of Entries, Page	37
Tenants by the Verge, concerning them	38
Tenants in Coparcenary, concerning them	<i>Ibid.</i>
Of Sisters, Aunts, &c.	39
Partition by Coparceners, and Te- nant by Courtesie	<i>Ibid.</i>
Parceners by Custom of Gavelkind	40
Difference between Coheirs and Copartners	45
Joint-Tenants, concerning them,	41
By Dissein, &c.	<i>Ibid.</i>
Survivorship amongst them	42
Upon a Lease	<i>Ibid.</i>
Of Goods, &c.	<i>Ibid.</i>
Of Leases by them	132
Where they shall have several Inhe- ritances	43
If one of the Donees and his Issue also dies	44
here one grants a Rent-Charge to the other	<i>Ibid.</i>
Ejectment by one Joint-Tenant a- gainst another	109
Joint-Tenants may make Partition by Consent	45
How amongst such Tenants, the Husband and Wife but as one,	46

How

The TABLE.

How Joint-Tenants become Tenants in Common	Page 47
Tenants in Common, concerning them	46
How Tenants in Common from Joint- Tenant	47
How between Feoffor and Feoffee,	48
How between Tenants for Life, <i>Ibid.</i>	
How when one of them for Life grants away his Part to one of his Fellows	<i>Ibid.</i>
How when one of the three Joint- Tenants releases to one of his Fel- lows	49
How when a Man, his Wife, and a third Person are Joint-Tenants, and the third Person releaseth to the Husband	<i>Ibid.</i>
How if the third Person releaseth to the Wife	50
Tenants in Common by Prescrip- tion	<i>Ibid.</i>
What Actions brought by them, <i>Ibid.</i>	
How an Action lies by one Tenant in Common, his Executors and Administrators against the other, by Stat. 4 & 5 Ann. cap. 16.	51
The like between Joint-Tenants, where one receiveth more than his Share	51
Partners by divers Descents of Actions and Partitions by them	52, 53 Of

The T A B L E.

Of Leases made by them,	Page 53
Tenants in Common by divers Titles,	
concerning their Executors, &c. as	
to Chattels Real and Personal,	54
Tenants in ancient Demesne, &c.	
concerning them	55
Tenants by Occupancy	100
How Occupancy may be prevented,	
&c.	<i>Ibid.</i> & 101

Trees. *Vide* Estovers, Waste.

Windfalls, who shall have them,	147
What Property Lessees have in Trees,	
	148
Concerning Trees cut down by a	
Stranger	<i>Ibid.</i>

Use.

U PON leasing or granting the Use	
of a Pump or other Thing,	86

Waste.

B Y Copyholder, makes a Forfeiture	32
Waste by Lessee relieved in Chancery,	79
Concerning Leases made to hold with-	
out Impeachment of Waste,	82, 211
Concerning Trees cut, and Houses	
pull'd down by Tenant for Life,	147
Concerning Windfalls	<i>Ibid.</i>
Caution to Tenants against committing	
Waste	201
By	

The TABLE.

By pulling down Houses or Walls, &c.	Page 201, 202
Glass-Windows, Wainscot, or Doors fixed	202
By building a new House	<i>Ibid.</i>
By Tenants of Parks, Warrens, or Dove-houses	<i>Ibid.</i>
By felling Timber-Trees, double Waste	<i>Ibid.</i>
Waste in Houses, Gardens or Tim- ber-Trees	203
What Trees are accounted Timber, <i>lb.</i>	
Waste in Willows, Birch, Hazels, Quick-hedge, &c.	<i>Ibid.</i>
Waste by House-burning	204
Waste in Woods, Fruit-Trees, &c. <i>lb.</i>	
Digging Gravel, Stones, or Mines, <i>lb.</i>	
Suffering Sea-Banks, &c. to decay	<i>Ibid.</i> & 205
By converting into Wood or Mea- dow	205
The Punishment and Forfeiture in Waste	<i>Ibid.</i>
How the Action lies	<i>Ibid.</i>
Not against Guardian or Tenant by <i>Elegit</i>	<i>Ibid.</i>
Not against Tenant at Will	206
But against a Tenant in Mortgage, <i>lb.</i>	
Of a Writ of Reparation among Joint-Tenants	<i>Ibid.</i>
Where upon Landlord's covenant to repair, Lessee may cut Timber, <i>lb.</i>	
Who	

The TABLE.

Who must have the Action for Waste	Page 206
Who must join in the Action	207
Of a Surrender after Waste committed	207, 210
If Waste be committed by a Stranger	207
If by one against whom the Tenant can have no Remedy	212
If where the Landlord covenants to deliver Timber, but fails,	207, 208
If it be to be taken out of the Lands, <i>Ib.</i>	
Waste committed by the Husband, and Wife punished, &c.	208
Where after the Lease, the Reversion is granted away	<i>Ibid.</i>
Lease determines pending the Action	209, 210
Recovery upon the Death of <i>Cestui que vie</i> after Waste	209
What shall be recovered upon Waste in Woods	<i>Ibid.</i>
So in Houses or Hedge-Rows	<i>Ibid.</i>
Pleas in Bar to a Writ of Waste,	210
That he rebuilt before Action brought	214
Abatement of the Writ in Waste	209, 210
Where the Tenant grants a Rent-charge, and after commits Waste	211

Where

The TABLE

Where Action lies after a Release,	Page 211
Plea that a Grantee hath nothing in the Reversion	<i>Ibid.</i>
Waste by Lessee before his Term begins	212
If House be uncovered before his Entry	<i>Ibid.</i>
Where the Waste happens by sudden Tempest, &c.	<i>Ib. &</i> 213
Who shall have the Timber, &c.	213
Of rebuilding it by the Tenant,	<i>Ibid.</i>
Of removing Furnaces	<i>Ibid.</i>
Digging Land, &c. for bettering the Ground	<i>Ibid.</i>
Forfeiture by Copyholder for Waste	213, 214

Wood. *Vide* Waste.

Some Observations upon the Statutes, concerning the cutting, spoiling, and stealing of Wood.	215, 216, &c.
--	---------------

Words.

Of Words amounting to a Covenant	287
----------------------------------	-----

FINIS.

Ex 016
17/11/27